English Translations of

Majmoo'al-Fatawa of late Scholar Ibn Bazz (R)

Second Edition

By:

Sheikh `Abdul `Aziz Bin `Abdullah ibn `AbdulRahman ibn Bazz (May Allah forgive and reward *al-Firdouse* to him and his parents)

He was The Mufti of **Kingdom of Saudi Arabia,**
Chairman of the Council of Senior Scholars,
and Chairman of Department of Scholarly Research and Ifta'

This English Translations are collected from

http://www.alifta.com

Portal of the General Presidency of Scholarly Research and Ifta'

This file is volume No.20 of 30

(Part No. 20; Page No. 1)

(Part No. 20; Page No. 2)

(Part No. 20; Page No. 3)

In the Name of Allah, the Most Beneficent, the Most Merciful

(Part No. 20; Page No. 4)

(Part No. 20; Page No. 5)

Book of Waqf

(Part No. 20; Page No. 6)

(Part No. 20; Page No. 7)

Ruling on transferring a Waqf (endowment) building if it has collapsed and is no longer fit for residence

Q: My mother has a Waqf house, but the house is so old that it has now become unfit for residence. I would like to transfer the Waqf, sell the house, and then give the money raised to a mosque, a charitable society or in charity works. Is it permissible for me to do so?

A: You do not have the right to dispose of the Waqf or to divert the proceeds to any purpose other than that specified by the donor. If the building is no longer of service it is permissible to transfer the Wakf to a like or substitute property such as a land, a shop, or palm-trees whose income must be directed to the same purpose chosen by the Wakf donor for the house, on condition that such a procedure is carried out through the court in the area where the Waqf is located.

(Part No. 20; Page No. 8)

2. Ruling on transferring a Waqf if it is no longer beneficial

From 'Abdul-'Aziz ibn 'Abdullah ibn Baz to our respected brother, Gh. Gh. A., may Allah bless him!

As-salamu 'alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

I received your letter, dated 15/2/1395 A.H., and may Allah let you receive His Guidance and what it encompasses! The letter contains a question about a place where the people of the village perform the Two 'Eid (Festival) Prayers and Salat-ul-Istisqa' (Prayer for rain). It was around one kilometer away from the village, but as buildings were developed, they moved nearer to the land. There is now only half a meter between the land and the village. As a result, the place has now become a playground for children and a place where dogs spend the night. Is it permissible to transfer this Waqf (endowment) to another location that is nearly half a kilometer away from the houses? In case it is so, is it permissible to use its first location for another special known purpose?

A: It is permissible to transfer it from its current location to a more suitable place, farther away from the buildings, if, in the opinion of the village judge and notables, it is preferable to do so. If it is permissible to transfer it, it is also permissible to sell the first place and use the price that is raised to prepare the new place, such as by leveling the land and fencing it to protect it from dogs, livestock, etc. It is also permissible for the person who buys the first place to use it for a house or another purpose, as the ruling of the Masjid (mosque) on it will be removed once it is sold by Shar'y (Islamic legal) warrant.

(Part No. 20; Page No. 9)

However, it is not permissible for anyone from the village to sell it until they have consulted the village judge and received his Fatwa (legal opinion issued by a qualified Muslim scholar) on the matter, as he is more knowledgeable about the interests of his village and the juristic ruling on selling Waqf. May Allah grant us all to comprehend His Din (Religion) and to be steadfast on it! As-salamu 'alaykum warahmatullah wabarakatuh!

The President of the Islamic University

'Abdul-'Aziz ibn 'Abdullah ibn Baz

3. Ruling on transferring a Masjid if it is no longer of service

All praise be to Allah, the Lord of the worlds! May peace and blessings be upon the most honored of all Messengers, our Prophet Muhammad, his family, and his Companions!

I received a question that said that a group of Muslims living in South Africa had built a Masjid (mosque) in their area, where they perform the Jumu'ah (Friday) Prayer, the congregational Salah (Prayer), and the Two 'Eid Prayers. The government has ordered the Muslim residents to leave this area and move to another area. Is it permissible to sell the Masjid mentioned, through a judge or his deputy, and build another Masjid in the new area that they will be living in? Can it be sold in its present form or does it have to be changed by pulling down the Mihrab (Prayer niche), Minbar (pulpit), minaret, and all things indicating that it is a Masjid, or should the whole Masjid be pulled down and sold as vacant land, even though this would decrease the price greatly, and in fact makes it worthless?

A: There is no doubt that the Masjid mentioned will be of no service if the Muslims leave the area

where it is located. If a Waqf (endowment) is no longer of service, whether the Waqf is a Masjid or anything else, it becomes permissible to sell it according to the most correct

opinion of the Muslim scholars, and use the price that is raised to buy another similar Waqf in its place if possible. It was reported that Amir Al-Mu'minin (Commander of the Believers), 'Umar ibn Al-Khattab (may Allah be pleased with him), commanded that the Masjid in Kufa should be transferred to another place, for a particular benefit that called for that. When a Waqf is no longer beneficial, it is all the more permissible to transfer it. This is a question over which the Muslim scholars differ; however, the reliable opinion is that it is permissible. This is because the perfectly comprehensive Islamic Shari'ah (law) came to benefit the Muslims and defuse and reduce corruption. It commands Muslims to safeguard their property and forbids them to forfeit it. There is no doubt that if a Waqf is no longer useful, there is no benefit in keeping it; on the contrary, keeping it in such a case will lead to a forfeiture of the property. It is, therefore, obligatory to sell it and use the price raised to buy a similar Waqf, unless selling some of it is sufficient to repair it. If selling part of a Waqf is sufficient to be able to repair the remaining parts, the part should be sold and the money raised used to repair the remaining parts. In regard to the case in question, the benefit can only realized by selling the whole Waqf, i.e. the Masjid. As a result, the whole Masjid in its present form, without removing anything, can be sold and the money used to build a new Masjid in the new area where the Muslims are going to live. When it is sold, the ruling of a Masjid on it will end and it will become like other places, and it is permissible then to use it as a farm, a shop, etc. The ruling of the Masjid will be transferred to the new Masjid.

As for pulling down all that indicates that the place is a Masjid, after the decision is taken to sell it, such as the minaret, etc., I have not read any opinion on this from the scholars. The most correct opinion - and Allah knows best - is that removing these features is preferable, especially as the Masjid is located in an area where the Kafirs (disbelievers) live, as they may want to enrage the Muslims

by debasing it, as it used to be a Masjid. Although the ruling of the place will have been removed, this "rulings" issue does not matter to them, for they only care about the visible appearance of it. Consequently, if the obvious features of the Masjid, such as the minaret and the Mihrab are removed, this danger will be removed also. And Allah knows best! We ask Allah (Exalted be He) to set aright the affairs of the Muslims, choose the best of them as their rulers, raise their status everywhere, humiliate the enemies of Islam, and protect Muslim from their evil, as He is Able to do all things! May Allah's Peace, Mercy and Blessings be upon His Servant and Messenger, Muhammad, and upon his family and his Companions!

Vice President of the Islamic University in Al-Madinah Al-Munawwarah

'Abdul-'Aziz ibn 'Abdullah ibn Baz

Ruling on spending the money donated to improve another aspect in the Masjid than the one specified

Q 4: A man gave a sum of money to the committee responsible for a Masjid (mosque) and said that the money was to be used to install toilets, for instance, but the majority of the committee felt that they needed the money for another purpose, other than that stipulated by the donor. What is the ruling?

A: It is preferable and safer to spend the money for the purpose stipulated by the donor, if the purpose is lawful, such as installing toilets or on another permissible matter. However, if the committee responsible for the Masjid feels that there is a need to spend the money on building the Masjid, there is nothing wrong in doing so, In sha'a-Allah (if Allah wills). This is because building the Masjid is better and more beneficial than installing toilets next to the Masjid. In addition, building the Masjid is the primary aim and installing toilets is just a means to make it easier for people to perform Salah (Prayer) and increase the number of people attending the Salah. With Allah is the success!

Ruling on transferring donations for one Masjid to another

Q 5: There is a Masjid (mosque) in the United States of America for which money was collected to build, but there was a lot of money left over after the Masjid was built. There is another Masjid in another area, around which is a large Muslim community and they want to build a library, a school, and some other buildings. Some of the people responsible for the other Masjid want to take some of the money that the people responsible for the first Masjid have, but they are opposing this, saying that the money was given for the first Masjid. They say that if a Fatwa (legal opinion given by a qualified Muslim scholar) is given by Shaykh 'Abdul-'Aziz ibn Baz saying that it is permissible to transfer the money from the first Masjid to the second, they will have no objection. Therefore, we would like you to advise us on this matter.

A: If the first Masjid, for which the money was collected, is completed and it is not in need of any more money, it is preferable that the surplus money be used to build other Masjids, or their additional buildings such as libraries, toilets, etc. This is what is dictated by the Muslim scholars on the subject of Waqfs (endowments). Also, they are both Masjids and this is the purpose for which the money was donated. It is well known that people who donate money for the construction of a Masjid do so with the intention of contributing to building a House of worship for Allah. Therefore, it is preferable that the surplus money should be spent on another Masjid. If there is no other Masjid that needs money, it is preferable

to spend the surplus on the public interest, for the Sake of Allah and the Muslims, such as on schools, hospices, charity for the poor, etc. With Allah is the success!

Ruling on moving mus-hafs from one masjid to another if there is a need to do so

Q 6: One day, we found the owner of a small Masjid (mosque) carrying seven Mus-hafs (copies of the Holy Qur'an), some of which were printed by the King Fahd Complex for the Printing of the Holy Qur'an and others that were printed at the expense of a beneficent person and they were Waqfs (endowments). When we asked him about them, he replied that he wanted to do good by taking the Mus-hafs to a large Masjid in another city, due to the lack of Mus-hafs and the large number of worshippers performing Salah (Prayer) there. Respected Shaykh, what is the ruling on this?

A: If the small Masjid is not in need of some of the Mus-hafs that are there, there is nothing wrong in moving those that are not needed to another Masjid that needs them, if the intention is to benefit those who perform Salah there. However, it is preferable to ask the Imam's permission, as he is more knowledgeable about the needs of the Masjid. With Allah is the success!

(Part No. 20; Page No. 16)

7- The ruling on Waqf for sons not daughters

His Eminence Shaykh `Abdul-`Aziz ibn `Abdullah ibn Baz, the General Mufty of the Kingdom of Saudi Arabia, may Allah safeguard you!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

I have reviewed your reply to my previous question regarding the Waqf building located in Al-Ta'if. I will act upon what you have judged, may Allah bless you! On this occasion, I would like to consult Your Eminence concerning a similar question. Thanks to Allah, I own a building in Makkah Al-Mukarramah which I want to dedicate as Waqf (endowment); first for me for purposes of housing and investment, then for my sons and then for my grandsons continously as long as they beget males. If they do not beget males, may Allah forbid, it will be given to the poor and the needy. Is it legally prohibited to dedicate such building as Waqf to sons, not daughters? This is the topic which I want to consult you about. May Allah safeguard you, allow people to benefit from your knowledge and grant you health and success!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

I would like Your Eminence to know that I am an adherent of the Hanafy School of Jurisprudence .

(Part No. 20; Page No. 17)

Al-Nu`man (may Allah be merciful with him).

A: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

I see that this Waqf (endowment) should be dedicated to the needy of your offspring, whether males or females. Those who are rich should not share in such Waqf. In the event that your offspring were to die out, the wealth from the Waqf should be spent for purposes of charity, such as helping the poor, constructing mosques and other charitable causes. We invoke Allah to guide us and you to all that is good, as He is All-Hearing and Ever-Near (to all by His Knowledge)!As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

General Mufty of the Kingdom of Saudi Arabia and Chairman of the Council of Senior Scholars

`Abdul-`Aziz ibn `Abdullah ibn Baz

8- The soundest opinion is that daughters' children should not be deprived of Waqf

A question from a brother to His Eminence Shaykh `Abdul-`Aziz ibn `Abdullah ibn Baz, may Allah safeguard and bless you! Amen.

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

May Allah guide us and you to obtain beneficial knowledge and perform good deeds! What is your opinion on a person who bequeaths something or gives something as Waqf (endowment) but deprives the daughters' children of such Waqf? Is such Waqf legal, though he deprives daughters of such Waqf? If it is legal, what is the supporting evidence adopted by the Muslim scholars who regard such practice as permissible? I read an opinion by the Imam of Da`wah Shaykh Muhammad ibn `Abdul-Wahhab (may Allah be merciful with him) in which he nullifies such practice. It is worth mentioning that people continue to make this type of Waqf and some contemporary scholars regard it as permissible. I would like Your Eminence to clarify this issue which is confusing for me, may Allah guide you to benefit people by your knowledge and to act upon such knowledge! May Allah help you and make us and you steadfast adherents of His Religion! May Allah not mislead us after He has guided us to His Right Path, as He is the Ever-Near (to all by His Knowledge) and All-Accepting of all invocations! May Allah's Peace be upon His Prophet, Muhammad!

A: For me, the soundest opinion is that daughters' children should not be deprived of

Waqf (endowment). However, I am not positive regarding the ruling that depriving them of Waqf is invalid and a sort of deviation. That is why I delayed my reply so that I might find in scholars' opinions what can remove such confusion. However, since I am busy all the time and have no free time, I could not review scholars' opinions on such question properly. Rather, I have not found what I can trust regarding the ruling that the Waqf given by a person who deprives daughters' children of such Waqf is invalid. I ask Allah to grant us, you and all Muslims knowledge in His Religion and to save us from the sins of our souls and the evils of our deeds, as He is All-Hearing and Ever-Near (to all by His Knowledge)!

Ruling on receiving a fee for drawing water out of a well that is dedicated as Waqf

Q9: What is your opinion about a man who fixed a winch for drawing water out of a well that is dedicated as Waqf (endowment) and carries water to whoever needs it, but he only gives water to someone after receiving a fee?

A: If the ruler approves of this practice or this man lives in

a town whose people approve of this, or the well was out of service and this man repaired it and fixed a winch to draw water out of the well and carry it to whoever needs it, there is no objection to what he is doing. Moreover, he is considered a reformer and a benevolent person even if he receives a fee for doing so. However, if there is a person who wants to carry water to people for free and the man prevents him and carries water by himself to people to receive money from them, this is not permissible. In such a case, the ruler and the people of the town have to prevent the man from doing so. Allah is the Grantor of success!

Permissibility of exchanging Waqf camels for cars

Q10: We have some camels that our grandfather dedicated for charitable purposes and people used them to go on Hajj. People now go on Hajj in cars and these camels have also reproduced. Can we sell them and use the proceeds to build a Masjid (mosque)?

A: You can sell the camels and use the proceeds to buy cars that people can use to go on Hajj, as your father had intended. If he dedicated the camels for Hajj, you can sell them and buy a car, or two or three, that you can dedicate for the poor to go on Hajj in, so your father will get a reward similar to those of the people going for Hajj, In sha'a-Allah (if Allah wills).

11- The ruling on investing the property of Waqf

His Eminence revered Shaykh, `Abdul-`Aziz ibn `Abdullah ibn Baz,

the General Mufty of the Kingdom, may Allah grant you success!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

I would be grateful if you could reply to my question:

There is a Waqf (endowment) that involves Ud-hiyah (Ud-hiyah (sacrificial animal offered by non-pilgrims). The person charged with such Waqf insures that the Waqf is invested in a joint-stock company whose revenue can then be used for offering the Ud-hiyah. So, is such practice permissible?

A: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

It is permissible to invest such Waqf in a joint-stock company that does not deal in Riba, (usurious interests) if such company is trustworthy. The revenue can then be used for offering the Ud-hiyah. May Allah grant us success! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

General Mufty of the Kingdom

`Abdul-`Aziz ibn `Abdullah ibn Baz

(Part No. 20; Page No. 22)

Deputizing in Waqf

Q12- If an authorized agent of Waqf (endowment), including Ud-hiyah (sacrificial animal) or anything else, wishes to deputize another person for such Waqf; who is more entitled to assume this responsibility, one's sons or one's brothers? In a case where the testator does not stipulate that the agent can deputize another, what should be done?

A: If the testator does not stipulate that the agent can deputize another for the Waqf, the matter is referred to the ruler. The agent has the right to nominate a person who is more capable, whether the person is a brother or a son.

General Mufty of the Kingdom

`Abdul-`Aziz ibn `Abdullah ibn Baz

Zakah on the revenues of Waqf

Q13- Regarding the revenue of Waqf (endowment) including Ud-hiyah (sacrificial animals); is Zakah due on such revenue before it is invested in a direct business or on the returns of such revenues?

A: No Zakah is due on the property of Waqf. May Allah grant us success! May As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

General Mufty of the Kingdom

`Abdul-`Aziz ibn `Abdullah ibn Baz

The ruling on changing the recipient of Waqf

Q14: There is a farm that is dedicated as Waqf (endowment) for offering breakfast for the observers of Sawm (Fast) in a particular mosque during Ramadan. It is well known that people are no longer in need of this. Who is the suitable recipient that can be given the revenue of the Waqf mentioned above?

A: If the case is as you have mentioned, the revenue of such Waqf (endowment) should be given to the poor of the town. This is because the donor intended the poor to benefit from the revenue of the Waqf during Ramadan. Since the poor no longer go to mosques to have breakfast during Ramadan, the revenue of the Waqf should be given to the poor at home so that such revenue can help them observe Sawm (Fast) and Qiyam-ul-Layl (standing for optional Prayer at night). Also, the donor will get the reward when this charity is given to those deserving of it. Allah (may He be Exalted and Glorified) knows best!

Is it permissible to dedicate as Waqf the buildings that were built through loans from a Real Estate Bank

Q15: Is it permissible to dedicate as Waqf (endowment) such buildings built through a loan from the Real Estate Development Fund while these buildings are still mortgaged to the Fund?

(Part No. 20; Page No. 25)

A: There is disagreement among the Muslim scholars over this issue. Such disagreement is based on another question which is whether a mortgage is necessary without receipt or not. Those who say that a mortgage is not necessary except upon receipt, see that Waqf (endowment) and other practices of property transfer are valid as the mortgage has not been received. Those who say that a mortgage is necessary without receipt, sees that Waqf and other practices of property transfer are invalid. To be on the safe side, such buildings should not be dedicated as Waqf except after the donor repays his debts to the bank to avoid the differences among scholars on this question and to act upon the Prophetic Hadith which says: (Muslims are on (i.e. bound to) their conditions.) .

(Part No. 20; Page No. 26)

(Part No. 20; Page No. 27)

Chapter on Gifts and Grants

Urging Muslims to donate some of their property to help the needy Muslims

(Part No. 20; Page No. 28)

(Part No. 20; Page No. 29)

Urging Muslims to donate some of their property

to help needy Muslims

In the Name of Allah, the Most Beneficent, the Most Merciful. All praise be to Allah, the Lord of the Worlds and a blessed end is for the pious! May Allah's Peace and Blessings be upon His Servant and Messenger, His Chosen Prophet from among His Creatures, and His Trustee over His Revelation, our Prophet Muhammad ibn `Abdullah and upon his family, Companions and those who follow his way and act upon his guidance! To proceed:

I would like to thank our Muslim brothers working for the International Islamic Relief Organization for their tireless efforts and blessed activities in helping Muslims everywhere, relieving the needy and consoling the poor and teaching people what is necessary for them in their religion and what Allah has enjoined and what Allah has forbidden. Also, I would like to thank them for caring for mosques, schools, orphanages and other establishments that benefit Muslims all over the country. News has reached me regarding their activities and good efforts that grant me and all Muslims pleasure and joy. I would like to seize the opportunity to advise them to increase their efforts in serving Muslims, work sincerely for Allah's Sake and perform their tasks in the best and most perfect way as Allah (may He be Exalted and Glorified) says: ﴾Verily, Allâh commands that you should render back the trusts to those to whom they are due﴿

(Part No. 20; Page No. 30)

Describing the Believers, Allah (Glorified be He) says: ﴾Those who are faithfully true to their Amanât (all the duties which Allâh has ordained, honesty, moral responsibility and trusts) and to their covenants;﴿ He (Exalted be He) also says: ﴾O you who believe! Betray not Allâh and His Messenger, nor betray knowingly your Amânât (things entrusted to you, and all the duties which Allâh has ordained for you).﴿ ; ﴾Truly, We did offer Al-Amânah (the trust or moral responsibility or honesty and all the duties which Allâh has ordained) to the heavens and the earth, and the mountains, but they declined to bear it and were afraid of it (i.e. afraid of Allâh's Torment). But man bore it. Verily, he was unjust (to himself) and ignorant (of its results).﴿ ; ﴾"Truly! The Muttaqûn (the pious - See V.2:2) will be amidst Gardens and water-springs (Paradise).﴿ And: ﴾Verily, the Muttaqûn (the pious. See V.2:2), will be in place of Security (Paradise).﴿ The pious are those who render trusts back to those to whom they are due, fear Allah, glorify Him, worship Him sincerely, observe Allah's Rights, observe people's rights and keep away from all what Allah has forbidden. Those people are the pious and the believers who are faithfully true to their trusts and about whom Allah (Exalted be He) says: ﴾Those who are faithfully true to their Amanât (all the duties which Allâh has ordained, honesty, moral responsibility and trusts) and to their covenants;﴿

Also, I advise them to care for all poor people and Muslim refugees. They should give much more attention to Muslims than to non-Muslims. There is no objection

to help non-Muslims to arouse their interest in Islam. This is because Allah (Glorified and Exalted be He) prescribed a share of Zakah (obligatory charity) and Bayt-ul-Mal (Muslim treasury) to attract the hearts of those who are inclined towards Islam, reinforce faith and arouse the interests of non-Muslims in Islam. Also, they have to focus on some points such as caring for education, instructing and guiding the ignorant, teaching them correct Islamic beliefs, enlightening them of Allah's Religion and distributing useful books for free, particularly copies of the Noble Qur'an. This is because the distribution of copies of the Noble Qur'an to Muslims is one of the most vital tasks as the Book of Allah contains guidance and light for people. Also, the Noble Qur'an is the most honorable, soundest and most truthful Book. Allah (Glorified and Exalted be He) says: ﴾Verily, this Qur'ân guides to that which is most just and right﴿ -- ﴾And this is a blessed Book (the Qur'ân) which We have sent down, so follow it and fear Allâh (i.e. do not disobey His Orders), that you may receive mercy (i.e. be saved from the torment of Hell).﴿ -- ﴾(This is) a Book (the Qur'ân) which We have sent down to you, full of blessings, that they may ponder over its Verses, and that men of understanding may remember.﴿ -- ﴾Do they not then think deeply in the Qur'ân, or are their hearts locked up (from understanding it)?﴿ -- ﴾Alif-Lâm-Râ. [These letters are one of the miracles of the Qur'ân, and none but Allâh (Alone) knows their meanings]. (This is) a Book which We have revealed unto you (O Muhammad صلى الله عليه و سلم) in order that you might lead mankind out of darkness (of disbelief and polytheism) into light (of belief in the Oneness of Allâh and Islâmic Monotheism) by their Lord's Leave to the Path of the All-Mighty, the Owner of all Praise.﴿

-- ﴾And We have sent down to you the Book (the Qur'an) as an exposition of everything, a guidance, a mercy, and glad tidings for those who have submitted themselves (to Allâh as Muslims).﴿

And: ﴾this Qur'ân has been revealed to me that I may therewith warn you and whomsoever it may reach.﴿ When the Prophet (peace be upon him) addressed people during the Farewell Hajj on the Day of `Arafah (9th of Dhul-Hijjah) he said: ﴾I am leaving you that which if you stick to you will not go astray: the Book of Allah.﴿ The Prophet (peace be upon him) pointed out that people will not go astray as long as they adhere to the Noble Qur'an. It is worth mentioning that adherence to the Noble Qur'an is adherence to both the Noble Qur'an and the Prophetic Sunnah as the Sunnah is the second Revelation. In the Noble Qur'an, Allah commands Muslims to abide by the Sunnah. Also, He (Glorified be He) commands Muslim to obey the Messenger and adhere to the religion of Islam. Allah (Exalted be He) says: ﴾Say: "Obey Allâh and obey the Messenger﴿ And: ﴾O you who believe! Obey Allâh and obey the Messenger (Muhammad صلى الله عليه وسلم), and those of you (Muslims) who are in

authority. (And) if you differ in anything amongst yourselves, refer it to Allâh and His Messenger (صلى الله عليه وسلم)) Thus, obedience to the Messenger is a part of obedience to Allah and whoever obeys the Messenger, indeed he or she obeys Allah. Recommendation of the Noble Qur'an is in fact a recommendation of both the Noble Qur'an and the Purified Sunnah. There is no way for survival or happiness except through following the Book

of Allah (the Qur`an) and acting upon the Sunnah of His Messenger (peace be upon him) in one's words, deeds and beliefs.

Thus, it is desirable for the organization and scholars wherever they are, as well as for every Muslim, to cooperate in this field by rendering rights to their owners, teaching ignorant people, guiding people, enjoining what is good and forbidding what is evil. This is the Way of Allah, which is the Straight Path regarding which Allah (Glorified be He) says in the Noble Qur'an: (Guide us to the Straight Way.) And (And verily, this (i.e. Allâh's Commandments mentioned in the above two Verses 151 and 152) is My Straight Path, so follow it) Also, Allah (Exalted be He) says about the Prophet (peace be upon him): (And verily, you (O Muhammad صلى الله عليه و سلم) are indeed guiding (mankind) to the Straight Path (i.e. Allâh's Religion of Islâmic Monotheism).)

Reforming people's beliefs, guiding them to what is good, teaching them what Allah has enjoined and warning them against what Allah has forbidden are more important than securing better living and health conditions for them. This is because reforming one's religion is given priority over all other matters. Thus, it is obligatory upon the organization, preachers, scholars and Muslim rulers everywhere to give much attention to the reform of peoples' Islamic beliefs and guiding them to what they have been created for such as the Oneness of Allah, obedience to Allah, steadfast adherence to Allah's Religion, avoidance of what Allah has forbidden and abidance by

the limits set by Allah. This is what is incumbent on all rulers. It is obligatory for them to obey Allah and His Messenger, teach people the religion of Allah, guide people to the truth, oblige them to adhere to the truth and guide them until they practice the truth. This is what is obligatory on all rulers. We invoke Allah to grant them success, help them, set their affairs right and provide them with righteous retinue! Also, we ask Allah to guide the Muslim rulers to all that is good!

Accordingly, the organization represented in the officials and those working for it should give much attention to religion and education. It is worth mentioning that these things are more important than improving health conditions and saving the poor and the needy from hunger and need as they should care for both matters. However, caring for religion and reforming it and morals are greater and more vital. These practices secure survival and happiness both in this worldly life and in the Hereafter. Allah (may He be Praised) says: (O you who believe! If you help (in the cause of) Allâh, He will help you, and make your foothold firm.) And: (Verily, Allâh will help those who help His (Cause). Truly, Allâh is All-Strong, All-Mighty.) (Those (Muslim rulers) who, if We give them power in the land, (they) enjoin Iqamat-as-Salât [i.e. to perform the five compulsory congregational Salât (prayers) (the males in mosques)], to pay the Zakât and they enjoin Al-Ma'rûf (i.e. Islâmic Monotheism and all that Islâm orders one to do), and forbid Al-Munkar (i.e. disbelief, polytheism and all that Islâm has forbidden) [i.e. they make the Qur'ân as the law of their country in all the spheres of life]. And with Allâh rests the end of (all) matters (of creatures).)

The Prophet (peace be upon him) said: (The best among you (Muslims) are those who learn the Qur'an and teach it.) He (peace be upon him) also said: (Recite

(Part No. 20; Page No. 35)

the Qur'an as it comes on the Day of Resurrection as an intercessor for its reciters﴿ Allah (Glorified and Exalted be He) says: ﴾And this is a blessed Book (the Qur'ân) which We have sent down, so follow it and fear Allâh (i.e. do not disobey His Orders), that you may receive mercy (i.e. be saved from the torment of Hell).﴿

Teaching people about Allah's Noble Book and the Prophetic Sunnah which they have to learn is obligatory. Doing so is more vital and greater; rather, it is incumbent upon all scholars, rulers, officials and all those working for such organization and other organizations to take interest in Islamic affairs and give such affairs priority over all other issues. Also, they have to distribute useful books to Muslims, encourage preachers, care for increasing the number of preachers and sending them to Muslims all over the world as such activities produce great benefits. Also, they are a means through which Muslim can become well-versed in their religion, know what they are ignorant of and learn what is necessary for them regarding their religion. There can be no doubt that such practices will grant them happiness, great merit and a blessed end if they do such things for Allah's Sake and adhere to Allah's Religion. This is the way to salvation and happiness. They must help the poor and the needy, distribute food, clothes and other things fairly and justly. It is of Allah's Mercy and Blessing that such organization, other organizations and Muslims' great efforts are available all over the world to offer services to people.

(Part No. 20; Page No. 36)

We ask Allah to grant success, help, guidance and great reward to whoever assumes this obligation! Moreover, I would like to offer my thanks to our government, may Allah grant them success, headed by the Custodian of the Two Sacred Mosques, may Allah grant him speed recovery and guide him to all that is good, as well as to the Crown Prince `Abdullah, his second Viceroy Prince Sultan, their Excellency princes, ministers and officials! We thank them all for the effort they exert for the sake of Islam and Muslims as well as for lending a helping hand to such organizations and all projects that benefit Muslims and help them obey Allah. We thank them for their noble efforts.

We invoke Allah to increase their benevolence. Also, we ask Allah to grant us and them success and sincerity in all words and deeds! I would like to thank my Muslim brothers who made their contributions to this organization. We thank them for their efforts and activities. We invoke Allah to double their reward and replace what they spent for Allah's Sake. Allah (Exalted be He) says: ﴾and whatsoever you spend of anything (in Allâh's Cause), He will replace it. And He is the Best of providers.﴿ -- ﴾Verily, those who recite the Book of Allâh (this Qur'ân), and perform As-Salât (Iqâmat-as-Salât), and spend (in charity) out of what We have provided for them, secretly and openly, they hope for a (sure) trade-gain that will never perish.﴿ ﴾That He may pay them their wages in full, and give them (even) more, out of His Grace. Verily He is Oft-Forgiving, Most Ready to appreciate (good deeds and to recompense).﴿ --

(Part No. 20; Page No. 37)

﴾and whatsoever you spend of anything (in Allâh's Cause), He will replace it. And He is the Best of providers.﴿ -- ﴾Those who spend their wealth (in Allâh's Cause) by night and day, in secret and in public, they shall have their reward with their Lord. On them shall be no fear, nor shall they grieve.﴿ Also, He (may He be Praised) says: ﴾And whatever good you send before you for yourselves, (i.e. Nawâfil non-obligatory acts of worship: prayers, charity, fasting, Hajj and 'Umrah), you will certainly

find it with Allâh, better and greater in reward. And seek Forgiveness of Allâh. Verily, Allâh is Oft-Forgiving, Most-Merciful.》 Whoever spends something in Allah's Cause, Allah (may He be Exalted and Glorified) will replace it many times and grant him the best reward.

We supplicate to Allah to guide us to all that pleases Him. We ask Him too to settle the affairs of Muslims everywhere! Further, we supplicate to Allah to grant Muslims insight into their religion, provide them with rulers from among the best of them and make their rulers good! We invoke Allah (may He be Praised) to make our rulers better, to help them do all that is good, to provide them with good retinue that support the truth with them, and to make us, you and them from those guiding to the Straight Path and those guided to the Straight Path, the pious people and the reforming people as He (may He be Exalted and Glorified) is the Most Generous and Most Beneficent! All praise be to Allah, the Lord of the Worlds! May Allah's Peace be upon our Prophet Muhammad, his family, Companions and those who follow them kindly until the Day of Judgment!

(Part No. 20; Page No. 38)

A call to support

the High Commission for Aid to Bosnia and Herzegovina

A call by His Eminence Shaykh `Abdul-`Aziz ibn `Abdullah ibn Baz, the General Mufty of the Kingdom of Saudi Arabia, the Chairman of the Council of Senior Scholars, and the Departments of Scholarly Research, Ifta', Da`wah, and Guidance to support the High Commission to collect donations for Muslims of Bosnia and Herzegovina and to help by giving a portion of the Zakah money and other property so that it can continue its blessed activities.

This is among the advice of His Eminence to all Muslims, it reads as follows:

From `Abdul-`Aziz ibn `Abdullah ibn Baz to our Muslim bothers who seek to do good, lend a helping hand to the needy and contribute to the construction of Masjids (Mosques) and charity projects. May Allah grant you success and support His Din (religion) with your efforts! Amen!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

It gives me great pleasure to inform all Muslims of the activities of the High Commission to collect donations for relieving the Muslims in Bosnia, consoling the needy

(Part No. 20; Page No. 39)

and the poor and constructing Masjids, schools, hospitals and other projects that Muslims need there. The Commission is presided over by His Excellency Prince Salman Ibn `Abdul-`Aziz, the Governor of

Riyadh, may Allah grant him success! It should be mentioned that this Commission is very active.

I would like everyone reading my advice to seek reward by supporting and helping this Commission by giving a portion of Zakah money and other property so that it can continue its blessed activities in supporting Muslims, attracting people's hearts to Islam; propagating Islamic preaching among Muslims there, teaching their children and treating the sick and constructing and refurbish their Masjids and schools. It is crystal clear that such efforts deserve great reward and generous merit.

We pray that you receive the greatest reward as Allah (Glorified and Exalted be He) says: ﴾Help you one another in Al-Birr and At-Taqwâ (virtue, righteousness and piety)﴿ And: ﴾By Al-'Asr (the time).﴿ ﴾Verily, man is in loss,﴿ ﴾Except those who believe (in Islâmic Monotheism) and do righteous good deeds, and recommend one another to the truth [i.e. order one another to perform all kinds of good deeds (Al-Ma'ruf) which Allâh has ordained, and abstain from all kinds of sins and evil deeds (Al-Munkar which Allâh has forbidden], and recommend one another to patience (for the sufferings, harms, and injuries which one may encounter in Allâh's Cause during preaching His religion of Islâmic Monotheism or Jihâd).﴿ And: ﴾So keep your duty to Allâh and fear Him as much as you can; listen and obey, and spend in charity; that is better for yourselves. And whosoever is saved from his own covetousness, then they are the successful ones.﴿ And:

﴾and whatsoever you spend of anything (in Allâh's Cause), He will replace it. And He is the Best of providers.﴿ And: ﴾And whatever good you send before you for yourselves, (i.e. Nawâfil non-obligatory acts of worship: prayers, charity, fasting, Hajj and 'Umrah), you will certainly find it with Allâh, better and greater in reward.﴿

The Prophet (peace be upon him) said: ﴾Anyone who gives the value of a date from his legal earnings in charity - and Allah accepts only that which is good - Allah will accept it with His Right Hand and nurture it for its owner, as one of you nurtures his foal, until it becomes like a mountain.﴿ He (peace be upon him) also said: ﴾Everyone of you will speak to his Lord without an interpreter between them. He will look to his right side and will only see what he had done and he will look to his left and will only see what he had done, and he will look in front of him and will only see the Fire before his face. So avoid the Fire, even by (giving) half a date (in charity).﴿

There are many Ayahs (Qur'anic verses) and Hadiths that emphasize the virtue of Sadaqah (voluntary charity) and donating

to charitable causes. It should be mentioned that this Commission has a special account for Zakah and another for non-Zakah money.

May Allah guide us to that which pleases Him! We ask Him to make us of those who hasten to do good. We invoke Him to help us against the evil of our souls, the vices of our deeds and all misleading temptations. We ask Him to grant you blessing in all that He has provided you, to increase you from His Favor and to guide the Commission and its chairman to all that is good. May Allah double their reward, bless their efforts and support the truth through them, as Allah Alone has Power over all things! As-salamu `alaykum warahmatullah wabarakatuh!

The General Mufty of the Kingdom of Saudi Arabia,

Chairman of the Council of Senior Scholars,

and Chairman of the Departments of Scholarly Research, Ifta', Da`wah, and Guidance

The ruling on a sister's gift to her brother

Q 18: My father died some time ago. He left a house which we decided to sell and divide the money. One of my sisters wants to concede her share of the inheritance to me so that I can get married. She is already married and leads a prosperous life with her husband. Is this permissible? Please benefit us. May Allah benefit us and you!

A: You are permitted to accept this gift from your sister which is her share of the inherited house, as a monetary aid to get married if she is legally an adult. This is because there are evidence from the Qur'an and the Prophetic Sunnah that prove the permissibility of a woman donating her property to her relatives or others.

Also, it is permissible for her to give it in charity as long as she is legally an adult. Allah is the Grantor of success!

Sharing money among spouses to meet the family's needs

Q 19: Both my wife and I are employed. Since we got married, we have shared money. After getting our salaries, I fulfill the family needs from this money and

use the rest for future needs such as building a house, buying a vehicle, etc. Is the practice of using the wife's salary unlawful for the husband, taking into consideration that the wife agrees to it? I would like Your Eminence to guide me to what is right in order to avoid illicit gains, may Allah bless you!

A: If the wife allows sharing money with her husband in the manner mentioned above and she is legally an adult, there is no objection. Allah (Glorified be He) says: ﴾but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allâh has made it lawful).﴿ However, if she is incompetent and not legally an adult, you are not allowed to take anything from her money and you must save it for her. May Allah guide all Muslims to whatever pleases Him!

Taking the wife's salary with her consent

Q 20: If I got married to a woman who works as a teacher, is it permissible for me to take her salary with her consent when necessarily and for our interest such as, building a house but without documenting the money I take from her and she does not ask for a deed; taking into consideration that I am employed and I receive a monthly salary?

(Part No. 20; Page No. 44)

A: You are permitted to take your wife's salary with her consent if she is legally an adult. Similarly, you can take anything your wife offers you as assistance if you accept it and she is of legal age. Allah (Glorified and Exalted be He) said in Surah Al-Nisa': ﴾but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allâh has made it lawful).﴿ This is carried out without giving a title deed. However, it will be safer to take a title deed from her if you fear anything with regard to her family and relatives; or fear that she might go back on her word. May Allah grant us success!

21- Permissibility of giving a gift to help one's son get married

His Eminence Shaykh `Abdul-`Aziz ibn `Abdullah ibn Baz, the General Mufty of the Kingdom of Saudi Arabia, may Allah guide you to all that is good!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

I would like Your Eminence to give us the juristic ruling on the following topic:

I heard a Fatwa (legal opinion issued by a qualified Muslim scholar) issued by Your Eminence on the question of helping one's sons get married. You, may Allah safeguard you, see that it is lawful to help them and this does not contradict with the meaning

(Part No. 20; Page No. 45)

of the Prophetic Hadith: ('Be afraid of Allah, and be just to your children.') **If I have six sons of whom only four are married and I helped them get married, but the other two are still young, is it permissible for me to help them get married by entrusting a sum of money to a reliable person to give them only when they marry; and in case they do not get married, or are not in need of such money, the money is returned to all children and divided as inheritance?**

A: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

It is not permissible for you to allocate a certain sum of money to the two youngest sons if they are not qualified to get married because of their young age. When they grow up and are qualified to get married, you must help them get married if they cannot afford the costs of marriage as you did with their four brothers. Allah is the Grantor of success!

(Part No. 20; Page No. 46)

22- Parents are to give their sons double the portion of the gifts that they give their daughters

To our respected Shaykh `Abdul-`Aziz ibn `Abdullah ibn Baz, may Allah safeguard you!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) May Allah grant you success and guidance! To proceed:

I gave my children financial gifts. I granted the males amongst them double the portion that I granted the females. I thought it was fair to do so as this is the ratio of their Shar`y (Islamic legal) shares of inheritance. Nevertheless, my daughters questioned such division and asked me to give equal gifts to all my male and female children. I thus ask Your Eminence whether what I did is just which the Prophet (peace be upon him) commanded us to do by saying: (... Be just to your children.) **Or is justice to give equal gifts to male and female children? Provide me with your beneficial answer please. May Allah safeguard you!**

(Part No. 20; Page No. 47)

A: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

What you have done is the justice which the Prophet (peace be upon him) meant. It agrees with the division of inheritance that Allah (Exalted be He) enjoined. Verily, Allah (Glorified be He) is Just regarding all His Shar` (Islamic law) and Predestination. I ask Allah to guide all Muslims to all that pleases Him. As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

`Abdul-`Aziz ibn `Abdullah ibn Baz

(Part No. 20; Page No. 48)

Q 23: It is related in the Hadith that the Prophet (peace be upon him) said: (Be afraid of Allah, and be just to your children) **Does this mean that one should observe equality among children or that to the male is the like of the portion of two females as followed in the legal inheritance? With respect to gifts, there is a Prophetic Hadith in which the Prophet (peace be upon him), as I think, asks a father: "Have you given (the like of it) to everyone of your sons?" As for the phrase "the like of it"; if the Hadith is authentic, it denotes absolute equality unless he referred to sons only. I would like Your Eminence to explain this point. May Allah bless you!**

A: First of all, this Hadith is authentic and reported in the Two Sahih (authentic) Books of Hadith (i.e. Al-Bukhari and Muslim) on the authority of Al-Nu`man ibn Bashir (may Allah be pleased with him) that his father gave him a bondsman; but his mother said to his father: "I will not agree to it unless you make Allah's Messenger (peace be upon him) a witness on it." So, Bashir ibn Sa`d went to Allah's Messenger (peace be upon him) and told him what he had done. Upon this, Allah's Messenger (peace be upon him) asked: ('Have you given to everyone of your sons the like of what you have given to Al-Nu`man ? He replied in the negative. Allah's Messenger said, Fear Allah, and be just to your children.') This denotes that it is not permissible for a father to prefer some children over others in grants or to allocate property to some apart from others as they all are his children and filial gratitude is sought from them all. Thus, it is not permissible to favor some of one's children with grants apart from others. However,

(Part No. 20; Page No. 49)

scholars (may Allah be merciful with them) differed as to whether the father should treat sons and daughters equally with regard to grants and gifts; or that males should be given twice as much in gifts and grants, as followed in the legal inheritance. There are two opinions by scholars on this question, but the more preponderant is that grants are treated like inheritance, so equality is realized by giving the male the like of the portion of two females, as this is the share set by Allah in inheritance and Allah (Glorified be He) is the All-Just and All-Fair. Accordingly, a believer should give his son the like of the portion of two daughters with regard to grants and gifts as if it were inheritance. This is the highest degree of justice for both children and parents. It is obligatory upon parents to give a son a portion equal to that of two daughters with regard to grants and gifts. As a result, equality and justice are realized as Allah (Exalted be He) prescribed this rule with regard to inheritance and Allah is All-Fair and Ever-Just.

Obligation of being just with one's children

Q 24: There is a man who has four sons of whom one only is employed and married with five children. Some of the money possessed by the father comes from the salary of this son. I would like to tell you that the son supports his children, parents and brothers as they all live in the same house. The father wants to donate one-fifth of his money to his son in return for this son's work and income.

(Part No. 20; Page No. 50)

A: It was authentically reported that the Prophet (peace be upon him) said: ('Fear Allah, and be just to your children.') (Agreed upon its authenticity by Al-Bukhari and Muslim)

It is not permissible for the father to favor some of his children with anything of his property except with the consent of the other Mukallafs (person meeting the conditions to be held legally accountable for their actions) competent children according to the soundest of the two opinions issued by Muslim scholars on this issue. However, if the father wants to regard the money he gets from his son in the future as a loan or a trust with him, it is permissible. However, he must record it in a formal document. By doing so, the father saves the money he gets from this son and the money he gives him is not of his property, but it is the money he keeps for this son, and Allah knows best!

Being just to one's children is obligatory

Q 25: Is it permissible for me to give a son something which I do not give another son who is rich?

A: You are not permitted to favor any of your sons or daughters with anything over others as it is obligatory either to be fair with your children according to the rules of legal inheritance, or

(Part No. 20; Page No. 51)

not to give anything to any of them, as the Prophet (peace be upon him) said: ('Fear Allah, and be just to your children.') (Agreed upon its authenticity by Al-Bukhari and Muslim) However, if they agree that one of them can be favored with something of your property, it is permissible provided that those who agree are adult and legal adults. Also, if any of your children cannot earn a living because of illness or any other reason, and there is no father or brother to support them and gets no salary from the State to cover their needs; you must provide support accordingly, until Allah grants them the means where they no longer require your aid.

Q 26: My father owns a very old house in an excellent location. My father wants to record this house in the land register for my brother. I agree to this, but I have sisters. I asked my father about their shares in this house, but he asked me not to worry about them. I asked their permission, however, I fear that their agreement was out of their shyness of our father. What is the juristic ruling on this matter?

A: The father must observe justice with his children, males and females, according to the rules of inheritance. He is not to favor some of them with anything of his property

(Part No. 20; Page No. 52)

except with the consent of the other children if they are of legal age and their consent is not out of fear of their father or threat but out of free assent. However, it is better and more pleasing to hearts not to favor one child over another in any way. The Prophet (peace be upon him) said: ('Fear Allah, and be just to your children.') (Agreed upon its authenticity by Al-Bukhari and Muslim)

Q 27: Is it permissible for a father to give money or land as a gift to one son apart from others because this son is more useful to his father than his other siblings? What are the rights of parents over children and the rights of children over parents?

A: It is not permissible for a father to favor certain sons with more sums of money. The Prophet (peace be upon him) said: ('Fear Allah, and be just to your children.') (Related by Al-Bukhari and Muslim) If a son serves his father, whereas others

lead independent lives away from their father, it is permissible for the father to assign a monthly or annual salary to this obedient son in proportion to the services he offers to him. The salary should be equal to a salary given to a non-related servant or less. Also, the son should receive his expenses if he is supported by his father. Doing so is not injustice to other children as they live away from their father and do not serve him. The juristic ruling is what is evident for me from the Purified Shar` (Law) which stipulates that interests should be realized and completed, whereas evils should be hindered and decreased. The Purified Shari`ah (Islamic law) decreed that one should be rewarded for his good deeds, whereas a wrong doer should be punished for his wrong deeds. As for the rights of parents over children and the rights of children over parents, this requires elaboration and is discussed by scholars in many writings.

The Qur'an and the Prophetic Sunnah outline the rules of the relationship between parents and children. They both are the references for rules of relationships. In conclusion, a child should be grateful to his parents, do good to them, thank them for their great work and obey them with regard to all that is good. On the other hand, a parent must support his children until they are of legal age and able to earn their living or can dispense with the father's support with an inheritance, a Waqf (endowment), or a salary from the State treasury or from some benefactors. Also, a parent ought to guide his child and teach him all that is useful for his religion and worldly affairs. In addition, a parent should raise his child according to Islamic principles as much as possible. There is no doubt that this matter is very clear to anyone with the least insight into the Qur'an and the Purified Sunnah. May Allah guide me and you to have insight into the Qur'an and the Purified Sunnah and to act upon them, as He is the Best One to be asked for help!

The juristic ruling on giving the house furniture to one's sons and depriving the daughters

Q 28: Is it permissible for me to favor my sons with some my home furniture such as refrigerators, cassette recorders and other items to be under their ownership after my death and deprive my daughters of these things; as I have previously provided the daughters with such items?

A: No one is permitted to favor sons with anything and deprive daughters. It is obligatory upon a Muslim to be just in his dealings with both sons and daughters. The Prophet (peace be upon him) said: ('Fear Allah, and be just to your children.') It is not permissible to bequeath anything to sons and deprive daughters unless they are legally adults and agree upon such bequests. However, it is safer not to transfer anything by bequest to sons even if daughters agree upon it as they may do so out of their shyness while they do not really approve it. Thus, it is Islamically safer not to favor sons with your property even it is supposed that the daughters approve it, as I fear that they may agree while they are obliged to do so out of their shyness of you. You have to leave your property for your children to be divided according to the rules of legal inheritance set by Allah, which stipulate that to the male is the like of the portion of two females.

(Part No. 20; Page No. 55)

29 - The juristic ruling on giving the only son a gift and depriving his sisters

His Eminence Shaykh `Abdul-`Aziz Ibn Baz, may Allah safeguard you!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

I would like Your Eminence to provide me with a Fatwa on the following matter: I am the only son in a family who has four sisters. My father is well- to-do and owns agricultural lands and real estate. My father wants to gift me land whose area is 2 Qirats (a Qirat is a square measure equaling 175 m2) which is less than one-third of his property as a sold item through a contract of sale, although I have not paid the price of this land as I am his only son. I am certain that my sisters love me and will not raise any objection, but I have not consulted them regarding this matter. Is it permissible for my father to do so as I am his only son? Should I pay the price of the land to him, or should I get my sisters' approval without paying for the land? I would like Your Eminence to clarify this point, may Allah reward you with the best!

(Part No. 20; Page No. 56)

A: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

Your father is not permitted to favor you with a gift and deprive your sisters even it is called a sale. The Prophet (peace be upon him) said: ('Fear Allah, and be just to your children.') (Agreed upon its authenticity by Al-Bukhari and Muslim) However, if your sisters agree that your father can favor you with something and they are of legal age, it is permissible provided that they consent of their own free will, not out of threat, fear or anything that may force them to agree that your father can favor you with something without their consent. As for the command that a father should be just to his children, it commands that a father should treat sons equally; however, if he has sons and daughters, the father should give the male the like of the portion of two females as prescribed in the rules of legal inheritance. Allah is the Grantor of success!

General Mufty of the Kingdom of Saudi Arabia

`Abdul-`Aziz ibn `Abdullah ibn Baz

(Part No. 20; Page No. 57)

Q 30: Is it permissible to offer gifts to some sons apart from the others? Is it permissible for one who owns real estate and other property to record some of this property in the land register for his only son, taking into consideration that this son's mother and other kin are still alive?

A: If one has sons, he is not permitted to favor them or offer gifts to some sons apart from the others. He must be fair whether what he offers his sons is a gift or a grant. The Prophet (peace be upon him) said: ('Fear Allah, and be just to your children.') And: (Would it please you that they (your children) should all behave virtuously towards you? He said: Yes. He (the Prophet) said: Then be just toward all of them.) Also, it was narrated that Bashir ibn Sa`d Al-Ansary came to the Prophet (peace be upon him) and told him: "I have given a bondsman to my son." The Prophet (peace be upon him) said: (Have you given the like to all of your children? He said: No. Then, the Prophet (peace be upon him) said: Take him back.) .

Thus, one should be just and equitable with sons and daughters by giving the male the like of the portion of two females as done with inheritance. He must not bequeath anything to anyone of them apart from others as they should be treated as equals with regard to gifts. He should not favor a son with something apart from the others, even if a son is more grateful to him or is poorer; what Allah prescribed for him as inheritance will suffice.

(Part No. 20; Page No. 58)

However, it is lawful for him to support his young children if his grown-up children are not in need of his support. Support is incumbent on him for his young dependant children and other grown-up children if his children are rich and others are poor. He must support his poor children until Allah provides for them out of His Bounty. Doing so is not unjust because supporting these children is incumbent on their father if they do not have personal resources.

The Ruling On Distributing the property among sons and excluding daughters

Q: A man distributed his property among his sons and excluded his daughters and wives. After he did that, his sons disowned him and no longer asked about their father as they did before. He no longer has any money to spend on himself and on his wives. What is the ruling in Islam on this matter? Is he sinful? What is the duty of the sons towards their father knowing that they now own all what their father owned before? What is your advice for anyone who excludes the females in his bequest? Does the father have the right to receive Sadaqah (voluntary charity) or Zakah (obligatory charity)?

(Part No. 20; Page No. 59)

A: It is not permissible for anyone to favor any of his sons with any money as the Prophet (peace be upon him) said in the authentic Hadith: ('Be afraid of Allah, and be just to your children.') But if his sons were adults and allowed their father to specify one of them with something, that would be permissible. The sons have to support their father financially if he is poor and they have the ability to spend on him and if they differ, then the court has to settle this issue. Allah is the Grantor of success!

(Part No. 20; Page No. 60)

There is no blame in interceding for a son

His Eminence Shaykh `Abdul-`Aziz bin `Abdullah ibn Baz, may Allah grant you success!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

May Your Eminence reply in writing to my question, may Allah sustain and make you benefit Muslims!

A man has an amount of money with which he wants to buy a building but the value of the building is more than this amount. He went to his father and asked him to go with him to two wealthy people to intercede for him so that they would complete the remaining amount as a gift. The father went with his son and interceded for him and they accepted to give the son the remaining amount as a gift and he bought the building. Now, the father is haunted by doubt every now and then, thinking that he favored one of his sons over others by this act. Thus, was the father unfair to his sons by doing so? Should all this man's sons share with their brother in the gift his father interceded for him? May Allah reward you well!

A: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

(Part No. 20; Page No. 61)

We do not know that the mentioned intercession is reprehensible and neither of you are to be blamed for that, In sha'a-Allah (if Allah wills). It is only reprehensible to prefer children with gifts. As for intercession for you or for others, it is permissible if it was intercession for something Mubah (permissible) or Mashru` (Islamically acceptable) as indicated by general evidence. Allah is the Grantor of success!

General Mufty of the Kingdom of Saudi Arabia

`Abdul-`Aziz ibn `Abdullah ibn Baz

The permissibility of accepting gifts for those who do good deeds

Q 33: If two people dispute about money and they choose a third person as an arbitrator on the issue, is it permissible for that third person to usurp any portion of the money through our consent?

A: If two people choose a third person as an arbitrator regarding dispute between them on money and that arbitrator takes a portion of the money through their consent, I see no harm in it and in this case it is not called usurpation. Rather, it is a gift from them to him. However, if he stipulates arbitrating between them on their assigning for him a certain portion of the money, the permissibility of such a condition is then debatable and requires further elaboration.

Accepting Gifts

Q: What is your advise for a woman who gives a bottle of perfume to another woman, noting that the latter perfumes herself when going out? Is the gift giver held sinful?

A: It is permissible for women to give perfumes as gifts to one another. Gifts plant the seeds of love in the hearts and those who give gifts will be rewarded by Allah. If the gifted woman uses this perfume in unlawful ways, she will be the only one who incurs sin but

(Part No. 20; Page No. 63)

if the woman who gives her the gift knows that she will use this perfume when going out to markets, then it will not be permissible to give her that perfume as that would be considered cooperation in committing sins and aggression Allah (Exalted be He) says: ﴾but do not help one another in sin and transgression.﴿

Teachers' rejecting gifts

Q 35: Is it permissible for a teacher to accept gifts from her students? If it is not permissible for her to accept gifts, will it be permissible for her to accept them after the end of the educational year and the announcement of the exams results? If it is not permissible for her to accept them also after the end of the educational year, will it be permissible for her to accept gifts if those students left the school and went to another one?

A: It is incumbent upon teachers not to accept gifts because it may lead to oppression of those who did not give her gifts. It may also lead to more care for those who offer her gifts and help them to cheat. Therefore, teachers should not accept gifts that were offered to them by their students because doing so may lead to other harms.

(Part No. 20; Page No. 64)

All believing men and women should safeguard their religion and stay away from the causes of suspicion and danger. Moreover, they will be permitted to receive gifts from students who left school and moved to another one. This is because suspicion and danger will be removed in this case. Teachers will also be permitted to receive gifts from their students after their retirement or leaving work.

Permissibility of accepting gifts after completing a job

Q 36: I teach Qur'an at a charitable association. After giving certificates to students, they give me a collective gift that has no effect upon the estimation of the student. Should I accept their gift?

A: If accepting the gift was after giving grades, granting certificates, and finishing work in this association, there is nothing wrong with receiving it. This is because of the generality of evidence that denote the permissibility of accepting gifts. May Allah grant us success!

(Part No. 20; Page No. 65)

The prohibition of accepting bribes in the guise of gifts

Q 37: What is the religious ruling on a person who gives precious objects to his boss under the pretext that they are gifts?

A: This is a big mistake and a means to an evident evil. Thus, it is obligatory upon the boss not to accept gifts since they could be bribes or a means of flattery and betrayal, unless he does not take it for himself but rather gives it to the hospital and tells the person offering it of that. He should tell him that: "This is for the benefit of the hospital and I will not take it for myself". However, it is more prudent and safer to reject it, without either taking it for himself or for the hospital; for, this could tempt him to take it for himself. He may even be misjudged by others, and the person offering it may treat him impudently as a result of his acceptance of it or seek preferable treatment from him through it. It was related that when the Prophet (peace be upon him) sent an emissary to collect Zakah (obligatory charity), he [presenting what he collected and seizing certain objects. Ed.] said: "This is for you and this is given to me as a gift". Then, the Prophet (peace be upon him) condemned such behavior and addressed the people saying: ("What is the matter with the one of you whom we employ him to fulfill a Command of Allah, and he says: This is for you and this is given to me as a gift. Shall he stay in his father's or mother's house and see if

(Part No. 20; Page No. 66)

he is given any gifts (or not)!") (Related by Muslim in his Sahih) This Hadith indicates that it is obligatory upon the employee, who is entrusted by the state to do any work, to fulfill his duty and not to take any gifts for fulfilling it. However, if he happens to receive a gift for it, he should deliver it to Bayt-ul-Mal (Muslim treasury), as it is impermissible for him to take it for himself because of the authentic Hadith mentioned above and because seizing it on his part would be a means to evil and betrayal of trust. Indeed, there is neither might nor power except with Allah!

The Prohibition of taking back or purchasing a gift

Q 38: I gave my nephew some of my camels as a gift and then I bought them back from him; what is the religious ruling on that act?

A: You should refrain from taking it back even if you will purchase it, since it was authentically reported from `Umar (may Allah be pleased with him) that he asked the Prophet (peace be upon him) about that where the Prophet (peace be upon him) said: (Do not take back your alms which you have given, even if the seller were willing to sell it to you for one Dirham) Besides, the Prophet (peace be upon him) said: (The one who takes back

(Part No. 20; Page No. 67)

his gift (which he has already given) is like a dog that swallows its vomit) He (peace be upon him) also said: (It is not lawful for a man to give a gift and then take it back, except a father regarding what he gives to his son.) These Hadiths, and others carrying the same meaning, indicate that it is prohibited to take back Sadaqah (voluntary charity) or gifts even if through purchasing it. We ask Allah Alone to guide us, you, and all Muslims, to profitable knowledge and to acting upon it! He is indeed Ever-Hearing, Ever-Near! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy and Blessings be upon you!)

The prohibition of taking a gift back except for what a father gives to his child

Q 39: After giving a sum of money as a gift, he took it back. What is the religious ruling on a person who takes back a gift?

(Part No. 20; Page No. 68)

A: Such a person is sinful and he should repent of that sin and return the gift that person, for the Prophet (peace be upon him) said, ﴾One who takes back his gift (which he has already given) is like a dog that swallows its vomit.﴿ The Prophet (peace be upon him) also said, ﴾It is not lawful for a Muslim to give a gift and then take it back, except a father regarding what he gives to his son."﴿ May Allah grant us success!

Ruling on a father taking back a gift from his son

Q 40: Is it permissible for the father to take back what he gave to his son?

A: It is permissible for the father to take back a gift that he gave to his son, if there is an interest in doing so and the son can return it to his father. This is because the Prophet (peace be upon him) said: (It is not permissible for any one to take back the gift he gave except for a father's taking back

(Part No. 20; Page No. 69)

what he gave his son.) This Hadith is reported by Imam Ahmed, Abu Dawud, Al-Tirmidhy, Al-Nasa'y and Ibn Majah. This Hadith was deemed as authentic by Al-Tirmidhy, Ibn Hibban and Al-Hakim.

Prohibition of asking one's parents to carry out their promise of giving him a gift

Q41: Is it permissible for a person to compel his father to give him what he promised of gifts?

A: It is not permissible to do so, because doing so contradicts the Hadith mentioned above. Moreover, it is a kind of ungratefulness to parents that is prohibited by Allah and is a major sin. It is authentically reported on the authority of Abu Bakrah Al-Thaqafiy (may Allah be pleased with him) that the Prophet (peace be upon him) said: ﴾Should I inform you of the greatest of the grave sins? We said: Yes, O Allah's Messenger! He said: To associate others in worship with Allah and to be undutiful to one's parents. The Prophet (peace be upon him) then sat up after he had been reclining (on a pillow) and said: And I warn you against giving false witness. I warn you against giving a false witness.﴿

(Part No. 20; Page No. 70)

A person, male or female, should warn against ungratefulness to parents and do the best in being dutiful to parents because of the Hadith mentioned above and the saying of Allah (Exalted be He): ﴾And your Lord has decreed that you worship none but Him. And that you be dutiful to your parents.﴿ Allah (Glorified be He) also says: ﴾give thanks to Me and to your parents. Unto Me is the final destination.﴿ Texts from the Qur'an and Sunnah in this regard are many.

Guardians may only take what is equal to living expenses from the Sadaqah given to an orphan

Q 42: We are the guardians of an orphan whose parents died and who has only two cousins. Both his cousins and some charitable people give him money (in charity), which we sometimes spend of it, knowing that we have our own source of income, which brings us much more money than the charity given to the orphan. We spend of that charity only on the grounds of considering the orphan as one of our own children. What is the religious ruling on that issue? Please, advise, may Allah reward you the best.

(Part No. 20; Page No. 71)

A: There is no harm in taking what is given to him of Sadaqah (charity), if it is equal to or less than the living expenses you spend on him. However, you should keep for him any money that exceeds such expenses. Besides, as glad tidings for you, Allah will bestow abundant reward on you for guarding and doing good to him.

Ruling on blood donation

Q 43: What is the ruling on blood donation?

A: There is no harm in doing so, especially at times of necessity and need.

(Part No. 20; Page No. 72)

(Part No. 20; Page No. 73)

Chapter of wills

(Part No. 20; Page No. 74)

(Part No. 20; Page No. 75)

Will's limit and time

Q 44: When does it become incumbent on one to make his will? Has the Shari`ah assigned a certain amount of money to be bequeathed?

A: It is always legally required to write a will, if a person has something to bequeath and one should hasten to write it, because it is authentically reported that the Prophet (peace be upon him) said, (It is not recommended for a Muslim who has something which is to be given as a bequest to have it for two nights without having his will written down regarding it.) Related by Al-Bukhari and Muslim in the Two Sahih (authentic) Books of Hadith. This indicates that it is recommended for a Muslim to hasten to write his will, if he has something which is to be given as a bequest. Besides, the maximum that could be bequeathed is only one third of his legacy. However, if one wills and bequeaths one fourth or one fifth or less than that, it is acceptable. Again, the most recommended rate that could be given as a bequest is one third, because the Prophet (peace be upon him) said in the Hadith reported from Sa`d (may Allah be pleased with him), (One-third, yet even one third is too much.) Besides, Ibn `Abbas (may Allah be pleased with them both) said, "I only people

(Part No. 20; Page No. 76)

bequeath one fourth instead of one third, [it would be better], as the Prophet (peace be upon him) said, (One-third, yet even one third is too much.) Moreover, Abu Bakr (may Allah be pleased with him) bequeathed one fifth. Thus, it is more preferable to bequeath one fourth or one fifth than to bequeath one third, especially if the money (legacy) is a lot. However, if one bequeaths one third, there will be no harm in that.

Bequest: ruling and textual evidence

Q 45: Is it obligatory to write a bequest? Should it be signed by witnesses? As I do not know any Shar`y (Islamic legal) text of it, I wish that you would tell me about it. May Allah reward you the best!

A: A will should be written in the following form: I, the testator signing below, bequeath that I testify that there is no God but Allah Alone with no partners and that Muhammad is His servant and messenger. I also testify that `Isa (Jesus) is Allah's servant, messenger, word that He threw to Maryam (Mary) and a spirit given by Him. I testify that Paradise and Hellfire are true, that there is no doubt about the Day of Judgment and that Allah will bring to life the dead buried in graves. I advise

(Part No. 20; Page No. 77)

my family, offspring and all relatives after me to fear Allah, set their mutual relation right, obey Allah and His Messenger, and advise one another to follow the truth and keep persistently to it. I advise them the same advice given by Ibrahim (Abraham, peace be upon him) and Ya`qub (Jacob) to their sons: ﴿And this (submission to Allâh, Islâm) was enjoined by Ibrâhîm (Abraham) upon his sons and by Ya'qûb (Jacob) (saying), "O my sons! Allâh has chosen for you the (true) religion, then die not except in the Faith of Islâm (as Muslims - Islâmic Monotheism)."﴾ He should then mention the amount of his money he wants to bequeath up to one third thereof, or a certain property he has - on condition that it is less than one-third of his total wealth. He should state the ways he wants it to be spent and the person entrusted with doing so.

Actually, the will is not obligatory; it is only recommended for one who likes to bequeath something. It is authentically reported in the Two Sahih (authentic) Books of Hadith (i.e., Al-Bukhari and Muslim) on the authority of Ibn `Umar (may Allah be pleased with both of them) that the Prophet (peace be upon him) said: ﴾It is not recommended for a Muslim who has something which is to be given as a bequest to have it for two nights without having his will written down regarding it.﴿ However, if he is liable to undocumented debts or dues, he has to write a will in this regard so that people's rights may not be forfeited. Moreover, he should call two just witnesses to witness his will and ask a reliable scholar to edit it so that it may be reliable. In fact, he may not content himself with writing it himself as his handwriting might be doubted by officials and perhaps there may be no reliable expert available to investigate it. May Allah grant us success!

Q 46: Is it true that a Muslim should write down his will and that both the mother and the father should write it down and place it daily under their pillow? In case this is right, what should I write if I do not have property to bequeath to my children?

A: It is recommended for a Muslim who has enough wealth to bequeath one third or less to channels of charity, since the Prophet (peace be upon him) said, (It is not recommended for a Muslim who has something which is to be given as a bequest to have it for two nights without having his will written down regarding it.) Agreed upon by Al-Bukhari and Muslim from Ibn `Umar (may Allah be pleased with them both). May Allah grant us success!

47- Definition of unfair will

Your Eminence Shaykh `Abdul `Aziz ibn `Abdullah ibn Baz may Allah safeguard him! Amen!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

May Allah teach you! Please, inform us about the Janaf will (unfair will). May Allah guide you to that which pleases and satisfies Him! Peace be upon you.

A: Wa `alaykum as-salamu warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you too!)

Janaf has been interpreted in some ways; it signifies unfair bequest of more than one-third of one's property, in which a case it is permissible to heirs not to enforce what is more than one-third. It also signifies bequeathing only to some heirs, in which case the will may not be enforced unless other Mukallaf (person meeting the conditions to be held legally accountable for their actions) heirs approved of it.

Moreover, it is interpreted to mean bequeathing to some heirs a portion that is more than that bequeathed to other heirs, to which the ruling of the previous case applies. The same applies to the case when someone endows a Waqf (endowment) while in his last illness that is more than one-third of the total property or consigning its revenue to only some heirs, according to the soundest view of scholars. The fact that what is more than one-third is unenforceable is supported by the Hadith reported

in the Two Sahih (authentic) Books of Hadith (i.e., Al-Bukhari and Muslim) to the effect that the Prophet (peace be upon him) said to Sa`d ibn Abu Waqqas (may Allah be pleased with him) when he wanted to give all his money or half of it in charity, as he was ill: ﴾One-third is enough, yet even one third is too much.﴿ Evidence supporting the last cases can be found in the Hadith stating: ﴾Allah has appointed for everyone, who is entitled to have a share o inheritance, his share of inheritance, so no bequest may be made to an heir.﴿ I ask Allah to grant you and us deep understanding of the religion and sticking firmly to it, for He is All-Hearing and Near.

As-salamu `alaykum warahmatullah wabarakatuh

`Abdul `Aziz ibn `Abdullah ibn Baz

48. The best channels of spending a bequest

Your Eminence Shaykh `Abdul `Aziz ibn `Abdullah ibn Baz, the General Mufty (may Allah safeguad him),

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

I would like to inform you that my mother bequeathed one third of her money without determining the channel of spending it. Thus, what is the preferable channel to spend this money? Should we spend it in building a Masjid (mosque) or in purchasing real estate and spending its revenue in charities? May Allah safeguard you!

A: Wa `Alaykum as-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you too!)

We deem it preferable that you purchase real estate and spend its revenue in supporting the poor and the needy among your kinfolks and others, and f some revenues remain, you may participate in the construction of Masjids (mosques). May Allah guide all the Muslims to success. As-salamu `alaykum warahmatullah wabarakatuh.

General Mufty of the Kingdom of Saudi Arabia

`Abdul `Aziz ibn `Abdullah ibn Baz

Bequest to charitable means

Q49: Your Eminence Shaykh, many people used to specify their bequest as Waqf (endowment) and then, the revenue of this Waqf would stop and the heirs will dispute concerning this Waqf. What is your advice to the person who desires to write his bequest especially if he is a rich person?

A: One should offer the bequest that suits his circumstances. He can bequeath a third, fourth or a fifth of his property to all charitable ways. If there is any person from among his offspring who is a needy person, he can receive from the revenue of this Waqf in order to avoid dispute. Moreover, one can bequeath one third, fourth or fifth of his property to all charitable ways. It will be permissible also to assign his Waqf for the sake of Ud-hiyah (sacrificial animal offered by non-pilgrims). Moreover, if the Waqf (endowment) donor may state that whoever is in need of his offspring and relatives may receive from the revenue of the Waqf what satisfies their needs. There will be no harm in doing so in order to avoid any contention among heirs and all things will be clear before Waqf (endowment) administrator. By doing so, Waqf administrator can dispose of the affairs of the Waqf and distribute its revenue exactly as stated in the bequest without any suspicion or doubt. This is because some Waqf donors may be strict in their bequest by saying that the heirs will receive the remainder. Then, dispute may arouse among the heirs. Then, the rest of the Waqf will not be enough for doing so. Generations succeed each other and multiply, so

hardship could follow. But if one said concerning the revenue of the Waqf as said by Al-Zubayr ibn Al-`Awwam (may Allah be pleased with him) and others in their bequest and as what was said by Ibn `Umar: "for the needy persons from my offspring", therefore there will be no harm if one said that the needy person from among my offspring should be given from the revenue of the Waqf.

50. The will that opposes the Shari`ah is invalid

From `Abdul `Aziz ibn `Abdullah ibn Baz to the reverend brother A. `A. `A., May Allah guide you to every good deed, amen!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

I have received your letter dated November 5, 1970 A.D. (may Allah bestow His Guidance on you), regarding the enquiry about my opinion and the opinion of my fellow university professors on the issue of the law of bequest, with a copy enclosed in the letter.

Thus, I would like to inform you that we have investigated the issue in the presence of a group of scholars, including shaykh Muhammad Al-Amin Al-Shinqity, His Eminence Dr. Taqy Al-Din Al-Hilaly, and His Eminence shaykh `Abdul-Qadir Shaybah Al-Hamd. Reading the attached copy of the law, all attendant scholars agreed that the law is unacceptable, because it is contradictory to Allah's Shari`ah and thus it could by no means be approbated. This is because Allah (may He be Praised) has not permitted that the bequeathed one third (of property) to be spent in the way stated in the law. Besides, it was not the practice of the Prophet (peace be upon him)

or of his noble Companions. Rather, he (peace be upon him) left it to the testator himself to assign the channel of spending the one third bequeathed. Thus, if he assigns a lawful channel, the bequest should then be fulfilled but if the assigned channel is unlawful, the bequest becomes null. This is true regardless of the ruling of bequest; whether it is obligatory to other persons who are not heirs as is claimed by some scholars or not as held by the majority of scholars. What affirms the invalidity of the law mentioned above is Allah's (may He be Praised) saying, ﴾Or have they partners (with Allâh — false gods) who have instituted for them a religion which Allâh has not ordained?﴿ Allah (Glorified be He) also says: ﴾This day, I have perfected your religion for you, completed My Favour upon you﴿ It is also affirmed by the Prophet's (peace be upon him) saying, ﴾He who innovates things in our affairs for which there is no valid (reason), these (things) are to be rejected.﴿ (Agreed upon by Al-Bukhari and Muslim) According to the narration of Muslim: : ﴾He who does any act for which there is no sanction from our behalf, that is to be rejected.﴿ Proofs of that opinion are numerous.

I hope that what we have said on the issue is sufficient as the right opinion in such

a matter is clear and everyone endowed with the least degree of insight regarding Allah's Shari`ah would surely realize that this law is a manifest falsehood, upon contemplation of the issue and the related proofs.

I also ask Allah (Glorified and Exalted be He) to guide us and you to that which pleases Him, to

safeguard us all against instituting in His Religion anything, which He has not allowed, mend our hearts and deeds, and to guide this government as well as other governments to apply His purified Law and to guard against whatever contradicts it. He is indeed the Master of all this and is Able to do it.

I wish I could have given you a quick reply (to your enquiry), yet numerous preoccupations caused the delay. Thus, I hope you will forgive us, may Allah forgive us all. Attached are all the documents. As-salamu `alaykum warahmatullah wabarakatuh

Director of Islamic University

in Al-Madinah Al-Munawwarah

He died without leaving a will

Q 51. A rich man whose children are all underage, the eldest is eight years old, died suddenly without leaving a will regarding his money, knowing that if he had been reminded of the will and its importance before his death, he would have made his will. Should we give out (in charity) a part of his money or is it sufficient to perform charitable deeds on his behalf, such as pilgrimage, `Umrah, sacrifice and the like? Please, advise.

A: The inheritors are not required to give out any part of his money. However, if they give out a specific common inheritance, such as one third or one fourth or the like (of the legacy), or give out a definite sum of money as a Sadaqah (on his behalf) or purchase real estate and set it as an endowment for the sake of Allah (Glorified and Exalted be He), with its revenue being spent in charitable channels and kind acts, they will be rewarded for it. Such acts will be a token of gratefulness to their father. Yet, these acts could be acknowledged, if performed by adult inheritors. Thus, regarding the underage children or the mentally disordered adults, their guardian is not permitted to give out anything of their share. May Allah grant us success!

(Part No. 20; Page No. 88)

The ruling on making a bequest that is less than one third

Q: It is known that a person is allowed to bequeath one third of his wealth. Is it permissible to bequeath less than one third, if one's wealth is large? What are the proper ways for distributing the bequest? Should the Ud-hiyah (sacrificial animal offered by non-pilgrims) be included in the bequest?

A: It is authentically reported that the Prophet (may Allah's Peace and Blessings be upon him) said ﴾to Sa`d ibn Abu Waqqas (may Allah be pleased with him) when he was asked by Sa`d while he was sick,if it is permissible to bequeath two thirds of his money for charity. The Prophet (may Allah's Peace and Blessings be upon him) said, "No". Then, Sa`d said, shall I bequeath half my money? The Prophet said "No". Sa`d said: Shall it be one third? The Prophet (may Allah's Peace and Blessings be upon him) said: you may bequeath one third and one third is too much. When you leave your inheritors rich, it would be better than leaving them poor begging people.﴿ Agreed upon by Al-Bukhari and Muslim.

(Part No. 20; Page No. 89)

It is authentically reported by Ibn `Abbas (may Allah be pleased with them) that he said: "I would like the people to bequeath one fourth, not one third of their wealth, as the Prophet (may Allah's Peace and Blessings be upon him) said: ﴾One-third, yet even one third is too much.﴿ Abu Bakr Al-Sidiq (may Allah be pleased with him) made a bequest of only one fifth. It is thus evident that one third is the maximum limit of bequest and giving charity when one is sick.

For bequeathing less than one third, there is no limit for that. One may bequeath any part of his money according to his wish provided that it would not be more than one third. If one bequeaths less than a third such as a fourth, fifth, sixth or the like, that would be better especially when one has large wealth. It is better to use the bequeath in charity like giving it to the poor, needy, way farer, those who fight in the Cause of Allah, maintenance of Masjids (mosques), Islamic schools, giving alms to relatives and the like. If one bequeathed Ud-hiyah (sacrificial animal offered by non-pilgrims) for him and for any member of his family, it is permissible as it is a good deed. It is also permissible to make his bequest to help those who want to marry and have no ability to bear marriage costs and to help indebted people and the like. May Allah grant us success!

53- When a bequest is made to free a slave, it should be from the third of the total inheritance

Your Eminence Shaykh `Abdul `Aziz ibn `Abdullah ibn Baz, Grand Mufti of the Kingdom and Chairman of the Departments of Scholarly Research, Ifta', Daw`ah, and Guidance. May Allah safeguard him!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

Your Eminence Shaykh, a man killed another and was sentenced to death by way of Qisas (just retaliation). Before execution, he bequeathed that a relative of his, out of one-third of the total estate, to observe Sawm (fast) on his behalf for two executive months, or to hire someone to do so, to perform Hajj on his behalf, and to buy a slave to emancipate it. However, the executor died and no term of the will, a copy of which is attached, was enforced.

The killer receives an annual salary from the state. He left behind a son of his paternal uncle's son, who is an heir by agnation. The latter died as well leaving behind a maternal half brother who has a prescribed share of inheritance in addition to other heirs who inherit through agnation.

We hope that Your Eminence, may Allah safeguard you, will give us a written fatwa if possible regarding the following:

- What is the ruling on the will of the killer mentioned above as far as Sawm, Hajj and emancipation are concerned? If the bequest to emancipate is enforceable, what does it equal and how should it be enforced?

- Does the maternal half brother have a share in the annual salary after the death of his legator?

We hope that you will answer these questions, may Allah reward you with the best! As-salamu `alaykum warahmatullah wabarakatuh

A: As-salamu `alaykum warahmatullah wabarakatuh

If the killer is liable to Sawm by way of vow or Kaffarah (expiation). Sawm has to be observed on his behalf whether he bequeathed so or not. As for his bequest relating to Hajj and emancipation, it must be enforced out of one-third of the total estate, if it is sufficient. As for the annual salary he receives from the government, it is to be decided by relevant authorities. However, it is possible that we, if deputized by the executor, buy a slave from another country where there is slavery and emancipate it. Anyway, it equals about ten thousand riyals. If the executor dies, you should refer the case to the court so as to nominate another executor. May Allah guide everyone to that which pleases Him. As-salamu `alaykum warahmatullah wabarakatuh

General Mufty of the Kingdom of Saudi Arabia

`Abdul `Aziz ibn `Abdullah ibn Baz

(Part No. 20; Page No. 92)

54- There should be no will for an heir

Our beloved Shaykh `Abdul `Aziz ibn `Abdullah ibn Baz, may Allah safeguard you!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) I waived the revenue of renting my villa that is in the old district of Muhammad ibn Turky al-Shifa to my wife during her lifetime. No one is liable to drive her out from it or participate with her this revenue. After her death, the villa will return to heirs as usual. Is it permissible to do this? May Allah safeguard you!

A: Wa `alaykum as-salamu warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you too!)

It is not permissible for any person to bequeath something to one of the heirs. The Prophet (peace be upon him) said: ("No bequest may be made to an heir.") Therefore, we conclude that

(Part No. 20; Page No. 93)

the bequest mentioned above is not valid except with the permission of heirs who should be of legal age. If they permit her to live in the villa after your death, they will have no right in it. The right of the heirs who are not of legal age and of heirs who are of legal age but do not waive their shares will be kept for them. May Allah grant all of us success! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!).

General Mufty (Islamic scholar qualified to issue legal opinions) of the Kingdom of Saudi Arabia

`Abdul `Aziz ibn `Abdullah ibn Baz

It is not permissible to give inheritance to a specific son

Q: A girl inherited money from her father and he bequeathed all his wealth to her and deprived his son. He made a bequest in this money and asked the daughter not to give her brother any part of this money after his death. After the father's death, the daughter sympathized with her brother and assigned him all the inheritance and the full bequest to improve his conditions as he is weak and poor and has children. This son was injured in an accident and it was said that he lost his memory, so he later denied that he took any money from his sister. So he did not give me the money back or carry out my father's will. Am I to be blamed for doing against my father's will if I give my brother all the inheritance to dispose with it? May Allah reward you the best!

A: It is not permissible for any Muslim to favor any of his inheritors with something more than his right, as the Prophet (peace and blessings be upon him) said: (Allah has appointed for everyone who has a right what is due to him, so no bequest should be made to an heir.) It is a must to divide inheritance

among them according to what Allah showed us. Every inheritor has to take his right and if they differ, then the court has to settle that difference. May Allah grant us success!

It is all right to use interest in helping poor heirs

Your Eminence shaykh `Abdul-`Aziz ibn Baz, the General Mufty of the Kingdom of Saudi Arabia and the Chairman of the Council of Senior Scholars, may Allah safeguard you!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!), to continue:

I hope that you would promptly answer my question as my work depends on your reply.

I am the guardian over one third of the legacy that is to be distributed as Sadaqah Jariyah (ongoing charity). However, the government seized the legacy in one of the banks of the Kingdom for four years; accordingly, an interest was accrued upon the sum of the legacy before its distribution.

My question is about this interest; since it has become one of the rights that has no defined owner, for the impossibility of knowing its rightful owner; some scholars view that such money should be spent in the public welfare of Muslims and this is a very strong opinion. Others see that it should be given to the poor but this opinion is less beneficial than the previous one. On the other hand, leaving it to the bank is a means that helps it to use the money in Riba (Usury/interest)-based transactions again, which is impermissible and sin.

The employees who used to work for the deceased were accustomed to receiving an annual bonus, but the heirs stopped giving them anything after the testator's death. Is it permissible for me to pay them their bonus from this interest? I hope that you would provide me with a decisive reply as soon as possible, may Allah reward you with the best. As-salamu `alaykum warahmatullah wabarakatuh

A: Wa `alaykum as-salamu warahmatullah wabarakatuh, to continue:

We recommend you to take the interest and spend it in charitable ways to fulfill the deceased's bequest, if it is a legal one and does not include anything that contradicts the Shari`ah (Islamic Law). You will be rewarded by Allah for this. If the heirs are poor, it is permissible to help them from the interest without telling them, for the poor is one of the recipients of Zakah (obligatory charity) from money that has no legal or defined owner. May Allah grant us all success!

As-salamu `alaykum warahmatullah wabarakatuh

The General Mufty the Kingdom of Saudi Arabia

`Abdul `Aziz ibn `Abdullah ibn Baz

Ruling on bequeathing to hold banquets after death

Q 57: Some people hold banquets and slaughter audible animals on the death of their relatives. Expenses of such banquets are extracted from the deceased's estate. If a person bequeaths to make such banquets after his death, is it obligated by Shari`ah (Islamic law) to enforce such a bequest?

A: Bequeathing to hold banquets after death of someone is a Bid`ah (innovation in religion) and an act of Jahiliyyah (pre-Islamic time of ignorance). Likewise, holding such banquets by the bereaved family even without a bequest is a Munkar (that which is unacceptable or disapproved of by Islamic law and Muslims of sound intellect) and is thus it is not permissible. Jarir ibn `Abdullah Al-Bajaly (may Allah be pleased with him) is reported to have said, "We used to consider gathering with the family of the deceased and making food for them after the burial to be a kind of wailing." (Related by Imam Ahmad through a good chain of narrators) Moreover, doing so runs counter to rules enacted by Allah regarding helping the bereaved family through making food for them as they are preoccupied with their misfortune. On being informed about the killing of Ja`far ibn Abu Talib (may Allah be pleased with him) in the battle of Mu'tah, the Prophet (peace be upon him) is authentically reported to have said to his family: ﴾Make food for the family of Ja`far for there has come to them that which keeps them busy.﴿

It is obligatory to adhere to the bequest of the deceased

Q 58. A man bequeathed before his death that one quarter of his money be distributed as follows: A sacrifice to be offered every year - charities to the poor and the needy - charitable channels and kind acts. Besides, the wealth of which he bequeathed one quarter consists of real estate and limited bank accounts. My question is: Is it permissible for us to spend a part of the bequest only in building a mosque or should we adhere to the things determined by the testator?

A: It is obligatory in such cases to adhere to what is determined by the testator in his will. This applies to all legal wills, as inheritors should adhere to them as much as possible. Allah is the Grantor of success!

Q 59. A man determined by a will before his death that the revenue of one of his houses be spent in offering sacrifices, in performing Hajj on his behalf annually or every other year as is possible, and - if something remains after that - it can be spent in charities.

(Part No. 20; Page No. 100)

The question is: Is the performance of the bequeathed Hajj obligatory, with the person available to perform the bequeathed Hajj being suspicious (He agreed to perform Hajj only for the sake of material gain)? Is it not better to spend the money assigned for Hajj in charitable acts, such as the establishment of a mosque or the like? .

A: It is obligatory to adhere to the will of the testator because Hajj is among pious acts, and the trustee should work hard to choose for the performance of Hajj a person who is known for his benevolence, righteousness and desire to perform Hajj for the sake of getting closer to Allah (may He be Praised) and not for the sake of money. However, Allah Alone knows peoples' (real) intentions and He Alone rewards for them!

Q 60. My father left us after his death a building among the inheritance. He bequeathed that it must be sold and a mosque be built with its price. Thus, when we estimated the inheritance we found that the building equals less than one third of it, knowing that one of our relatives offered to undertake the building of the mosque in return for the building or to purchase the building and pay its price in installments. So, what is the opinion of Your Eminence on that issue?

(Part No. 20; Page No. 101)

A: You must fulfill the will of your father as long as the building is worth one third or less of the inheritance. Thus, you must adhere to his will and build the mosque if its location is determined or else you must spend the money in building any mosque where people may need a mosque, be it in your district or anywhere else. Otherwise, you can entrust a reliable person to do this on your behalf. However, do not ever be negligent as regards this duty. Rather, the building must be paid and the price must be spent in building the mosque in a suitable location where people may be in need of a mosque. On the other hand, sell it, not as installment sale, but for instant payment, so that you can fulfill your father's will through spending the price in the construction of the mosque. Again, do not sell it by installment.

Bequeath for a daughter to marry her cousin

Q 61: My father bequeathed me to marry the son of my paternal aunt. My father did not ask me for my opinion before his death. This is because his terminal illness prevented him from asking me for my opinion. Moreover, when this person asked me for my opinion, I told him that I do not consider him except one of my relatives.

(Part No. 20; Page No. 102)

Respected Shaykh, is doing so a contradiction to Shari`ah (Islamic law)? Am I undutiful to my parents if I do not marry this man? Moreover, I want to marry another person from among my relatives who respects and loves me. I look forward to receiving your reply. May Allah reward you with the best!

A: You are not required to carry out the bequest mentioned above because the Prophet (peace be upon him) said: (A virgin must not be married until her permission is sought.) He (peace be upon him) said in another narration: (A virgin's father must ask her consent from her, and her consent is known by her silence.) We advise you also to offer Salat-ul-Istikharah (prayer for guidance) and counsel with those whom you desire from among your relatives and those who know the two people well. May Allah make easy for you all your affairs!

Fixing the executor's salary

Q 62: A person was nominated as an executor for some orphans about ten years ago. Their father had left behind a little

(Part No. 20; Page No. 103)

sum of money which the executor invested through buying and selling until it became a lot. Is it permissible for the executor to buy for himself goods owned by such minors as any other buyer without favoring himself, bearing in mind that he sells such goods as cars, building materials, and other goods bought by the money of minors in installments? Actually, the executor needs to buy a car or build a house, taking into consideration that the executor receives no money in return for investing their money or any effort he exerts for them and only does so for the sake of Allah's Reward.

A: Allah (Glorified and Exalted be He) says in the Qur'an concerning executors of orphan wills: (and whoever (amongst guardians) is rich, he should take no wages, but if he is poor, let him have for himself what is just and reasonable (according to his labour).)

In fact, Allah makes it obligatory to deal kindly with orphans and to promote their property. In this regard, Allah (may He be Praised) says: (Worship Allâh and join none with Him (in worship); and do good to parents, kinsfolk, orphans, Al-Masâkîn (the poor)) He (may He be Praised) also said: (And they ask you concerning orphans. Say: "The best thing is to work honestly in their property, and if you mix your affairs with theirs, then they are your brothers. And Allâh knows him who means mischief (e.g. to swallow their property) from him who means good (e.g. to save their property).)

(Part No. 20; Page No. 104)

Thus, if an executor wants to receive a salary in return for his works or a portion of profits yielded by his investing their money, he has to refer the case to the Shar`y (Islamic legal) ruler so that the latter might fix for him a salary deemed proper by Shari`ah (Islamic law). Allah is the Grantor of success!

An executor has to do what is more fitting for minors

Q 36: My uncle died while I was imprisoned. He left behind a monetary and real estate wealth and a large family for whom I am, after being released, the only guardian for. Is it permissible to distribute the estate among the heirs before the minors reach full age? Or, should it be kept until they grow older? If I am to invest their money in any project, is it permissible for me to be their partner paying my share out of my inheritance share and out of the project's revenue, bearing in mind that I am poor and have nothing to make a living for myself as well as my family? Moreover, the estate includes a highly-priced air-conditioned car which they use now. After being released, I want to use it for demanding debts owed by people to my uncle

(Part No. 20; Page No. 105)

as they are in far and located in difficult locations. Is this permissible? I have sent to you this question so that I might be enlightened about the whole matter. Answer me, may Allah reward you well!

A: All praise be to Allah! Your question is of a great importance. If you are the executor of those minors being nominated by the deceased's will, you will have to do your best to do what is more fitting for the minors. Thus, if you and the senior guides see that it is more fitting, it will be unobjectionable that the estate remains undistributed and to invest it through buying, selling and the like as deemed fitting by you. You may also fix your portion recording it in written documents. Actually, this is unobjectionable. If you deem it proper to distribute the property among the elders, you may do so each having their respective prescribed share and invest the shares of minors in a yielding real estate, give them to someone to invest them or invest them yourself. However, you may not take anything of the profit unless you agree on it with the country's court abiding by what it seems proper for you. Actually, as regards one's own rights, overestimation or even underestimation is not ensured. Therefore, you can communicate with the court and agree with it on some form that may free you from accountability with regard to minors. No doubt, this is what you should do. In brief, this is a great issue that needs much detail as we mentioned above. If you communicate with the court and consult it

(Part No. 20; Page No. 106)

regarding that which causes you doubt, you will be free from accountability In sha'a-Allah (if Allah wills) and you will have done what you have to do. As for distributing the estate, you should consider what is more fitting as we mentioned above. Thus, if you see it is more fitting to keep the money and expose the shares in total so that the revenue might be for everyone, it will be unobjectionable. And if you and other elders see it more fitting to have your shares and keep those of the minors after consulting the court regarding any confusion thereof, it will be better.

(Part No. 20; Page No. 107)

Chapter on inheritance

(Part No. 20; Page No. 108)

(Part No. 20; Page No. 109)

64-

Al-Fawa'id Al-Jaliyyah

Fi Al-Mabahith Al-Fardiyyah

In the Name of Allah, the Most Gracious, the Most Merciful. All praise be to Allah Alone! We praise Him, seek His Assistance and His Guidance, ask Him for forgiveness and repent to Him! We seek refuge with Allah from our evils and bad deeds! Those whom Allah guides, no one can lead them astray and those whom Allah leads astray, no one can guide them. I witness that none has the right to be worshipped but Allah and that Muhammad is His Messenger and Servant. May Allah's Peace and Blessings be upon Prophet Muhammad, his family, and Companions!

Here is a brief note about the rules of inheritance according to the Madh-hab (School of Jurisprudence) of Imam Ahmad ibn Hanbal (may Allah be merciful with him and lighten his grave). I gathered and summarized it from the reports of the eminent Shaykh Muhammad ibn Al-Shaykh Ibrahim ibn Al-Shaykh `Abdul-Latif - may Allah admit him into His spacious Jannah (Paradise) and help us and all Muslims benefit from his knowledge! Amen. I skipped the proofs and Ta`lil (logical and methodical reasoning) in most cases to summarize and make it easy for anyone who wants to memorize it. I sometimes refer to significant points of disagreements and outweighed those supported by the proofs, either in the main body of the book or in the footnotes. I gave this book the title: Al-Fawa'id Al-Jaliyyah Fi Al-Mabahith Al-Fardiyyah (Concise Summary of Inheritance Issues). May Allah help all benefit from it

(Part No. 20; Page No. 110)

and make this work solely for His Sake and a way to attain Paradise! Verily, Allah is the One Who is Capable of doing so!

65- An introduction to

the virtues of science of inheritance

The Prophet (peace be upon him) urged people to study the science of inheritance in many Hadiths. It was reported on the authority of `Abdullah ibn `Amr (may Allah be pleased with him) that the Prophet (peace be upon him) said: ﴿Knowledge has three categories; anything else is extra; a precise verse, or an established sunnah (practice), or a firm obligatory duty.﴾

It was reported by Ibn Majah and Al-Daraqutny on the authority of Abu Hurayrah (may Allah be pleased with him) that the Prophet (peace be upon him) said: ﴿Learn the science of inheritance and teach it to people, for it is half of knowledge. It is likely to be forgotten and it is the first thing that will be taken away from my Ummah.﴾ Sufyan ibn `Uyaynah (may Allah be merciful with him) said: "Being half of knowledge means that all people are in need of that knowledge." Ibn Rajab (may Allah be merciful with him) pointed out that the science of inheritance is half of knowledge because the religious rulings that are related to a Mukallaf (person meeting the conditions to be held legally accountable for their actions) are of two types; one relates to his life while the other relates to what is after death. Laws of inheritance are related to the second type."

Before studying the causes of inheritance and things related to it, we should know other

important things:

First, to know the definition of this science. **Second,** to know its subject. **Third,** to know its benefits. **Fourth,** to know its rulings. **Fifth,** to know the pillars of inheritance. **Sixth,** to know its conditions. **Seventh,** to know the rights that should be paid from the estate of the deceased.

As for its definition, it is the science through which one can know the shares of heirs and what it contains of calculations.

As for its subject, it is the estates.

As for its benefit: it is giving rights to their owners.

As for its rulings, it is a collective obligation that if it is done by a sufficient number of Muslims, there is nothing wrong with regard to others.

The pillars of inheritance are three: an heir, the deceased, and the estate.

Its conditions are three:

First, the materialization of the life of the heir after the death of the deceased person or considering him to be a living person as a fetus. The fetus will receive inheritance by two conditions. (1) It must be in his mother's womb at the time of the death of his testator even if it was a Nutfah (mixed drops of male and female sexual discharge). **(2)** It has to be born alive.

Second, the materialization of the death of the testator through seeing him, a testimony of two upright and just witnesses or deeming him as a dead person legally as the lost person or presumably as the fetus when his mother is beaten and miscarried it. The blood money of this fetus is five camels. Moreover, the death of this fetus will be supposed in order to distribute its estate which is the five camels.

Third, knowing the cause of inheriting. It means that we have to know the causes of inheritance, the degree of relationship and the like.

The rights that should be given from the estate of the deceased. The following order should be followed if the estate are not sufficient to give these rights.

First, the costs of preparing the deceased to be buried as shroud, the costs of digging the grave and the like.

Second, the debts that are related to the estate itself as mortgage, the Arsh (indemnity paid for inflicting certain wounds) that is related to the criminal slave person and the like.

Third, the debts in general whether they relate to Allah's rights or human rights

Fourth, bequeathing one third or less of the estate to a Muslim who is not an heir. But if the bequest is more than one third of the estate or to an heir, it will not be carried out except with the satisfaction of the heirs.

Fifth, is the inheritance.

(Part No. 20; Page No. 113)

66- Chapter of the reasons for receiving inheritance

Asbab (causes) are the plural form of the word Sabab (cause). It literally means the thing that leads to the desired goal. It means traditionally the thing that its existence necessitates the existence of another thing and its nonexistence means the nonexistence of this thing. The causes of inheritance are three: marriage, Wala' (manumitter's right of inheritance from their freed slave) and kinship.

Marriage: The valid marital contract even if there is no sexual intercourse between the spouses or Khulwah (being alone with a member of the opposite sex). The two spouses will inherit each other by this contract and also in the waiting period of the revocable divorce.

The second is the Wala': This relationship results from the favor of emancipation of the slave person. By virtue of this relation, the emancipator along with his `Asabah (agnate heirs) only inherit the estate of the deceased slave. Wala' relationship is applied

(Part No. 20; Page No. 114)

also upon the offspring of deceased slave person. This right will not be applied upon the offspring of the deceased slave if one of his parents is originally a free person.

The second is that this person should not be a slave to any other person. The baby will follow his mother with regard to freedom or slavery. As for religion, he follows the best religion followed by one of his parents. The Wala' of the baby will be as his father. It may also be for mother's pre-masters in one case; when a slave person marries an emancipated woman. In this case the Wala' of the children will be to the pre-masters of their mother. Moreover, the Wala' of the children may be turned to the pre-masters of their father with three conditions: The first; the mother should be emancipated. The second is that the father has to be a bondsman at the time of the children's birth. The third is that the father has to be freed before his death.

The third cause of inheritance is kinship: This kinship includes ancestors, offspring and collateral relatives. The ancestors are father, mother, grandfathers, grandmothers, great-grandfathers, great-grandmothers and even more up. Offspring are sons, daughters and their descents. Collateral relatives are brothers, their sons, daughters and offspring, and paternal uncles, their ancestors and their offspring.

(Part No. 20; Page No. 115)

67- Chapter on disinheritance

Literally, Mani` (impediment) is defined as something that stands in the way of two things. Traditionally, Mani` is a proposition which if it exists, the target will not be achieved and if it is absent, that target may still exist. On the other hand, Shart (condition) is defined as a proposition on which another proposition depends; thus if it is absent the dependent proposition is also absent but if it is fulfilled, the dependent may and may not follow. Disinheritance is determined by three factors: slavery, killing, and difference of religion.

Firstly: Slavery signifies the legal incapacity of the person enslaved. A slave neither inherits nor is inherited or excludes others from inheritance. A Mub`ad (a slave freed by one master but not by the other), on the other hand, inherits, is inherited, and excludes others from inheritance according to how much freedom this Mub`ad enjoy.

Secondly: Killing which necessities Qisas (just retaliation), Diyah (blood money), or Kaffarah (expiation) otherwise it does not prevent inheritance.

Thirdly: Difference of religion; a Muslim cannot inherit a Kafir (non-Muslim) except through Wala' (manumitter's right of inheritance from their freed slave) and vice versa. If a Kafir embraces Islam before distributing the inheritance, he would be given his due share to encourage them to accept Islam.

(Part No. 20; Page No. 116)

Kufr (disbelief) has various types and according to the Hadith there should be no inheritance among people of different religions.

68- Chapter on Male inheritors

Male inheritors are fifteen:

The son, son's son; however on down, the father, the paternal grandfather; however on up, the full brother, half brother on father's side, half brother on mother's side, full brother's son, son of half brother on father's side; however on down, full paternal uncle and half paternal uncle on paternal grandfather's side; however on up, son of full paternal uncle, son of half paternal uncle on paternal grandfather's side; however on down, the husband and the freed slave.

Chapter on female inheritors

The female inheritors consist of 11 inheritors:

Daughter, son's daughter even if the son is on down, mother, maternal grandmother,

(Part No. 20; Page No. 117)

paternal grandmother, paternal grandmother of father's father, full sister, paternal half-sister, maternal half-sister, wife and female who freed a slave. The total inheritors, whether male and female, are twenty six people.

70- Book of Furud stated by the Qur'an

The Arabic origin for the word Fard is used literally for cutting or clipping. However, the word Fard refers traditionally to the prescribed share of inheritance which is decided by Shari`ah (Islamic law) for a specific inheritor and which does not increase but by Rad (decrease in the number of shares of inheritance and an increase in their amounts) and does not decrease but by `Awl (increase in the number of shares of inheritance and a decrease in their amounts). On the other hand, inheritance is of two types; Fard (prescribed share of inheritance) and Ta`sib (agnate heirs). Accordingly, inheritors are divided into four sections. Inheritors that inherit only by Fard. Those are the following seven: A mother, her offspring, a husband, a wife, and a maternal or a paternal grandmother. Inheritors that inherit only by Ta`sib. Those are the following twelve: A son, a son's son (including a great son's son and so on), a full brother, a paternal half brother, son of a full brother (including his male descendants), son of a paternal half brother (including his male descendants), paternal full uncle (including his male ascendants), paternal half uncle (including his male ascendants), son of paternal full uncle (including his male descendants), son of paternal half uncle (including his male descendants), a freed male slave, and a freed female slave. Inheritors that may inherit by Fard or Ta`sib

(Part No. 20; Page No. 118)

or by both. Such inheritors are two: Father and grandfather. The last type of inheritors are those who inherit by Fard or Ta`sib but can not inherit by both of them together. Those are: A daughter or more, a son's daughter or more or a son's son's daughter etc., a full sister or more, and a paternal half sister or more. It is worth mentioning that Furud (specific shares of inheritance decided by Islamic law for specific inheritors) which are stated by the Qur'an are six: half, one forth, one eighth, two thirds, one third, and one sixth. However, a seventh Fard is proven by Ijtihad (juristic effort to infer expert legal rulings) of `Umar ibn Al-Khattab which is one third of the remainder.

71- Chapter on those who inherit one-half

The people who inherit one-half are five: The husband, the daughter, the son's daughter; however on down this son, the full sister and half sister on father's side.

A husband deserves one-half on the condition that there is no inheriting descendants; they are the deceased's children and the children of his sons; however on down.

The second: The daughter as she deserves one-half of the estate on two conditions; there is no agnate heir who is her brother/s and there is no sister.

The third: Son's daughter; however on down her father. She deserves one-half on three conditions: non-existence of agnate heirs who are her brother or her paternal uncle's son of the same degree, non-existence of her sister or her paternal uncle's daughter of the same degree and non-existence of an inheriting descendant who is higher than her in degree of relationship.

(Part No. 20; Page No. 119)

The fourth: The full sister as she deserves one-half on four conditions:

non-existence of an agnate heir who is her full brother, non-existence of a co-partner who is her full sister, non-existence of inheriting descendants and non-existence of inheriting-male ancestors i.e., the father and the paternal grandfather; however on up on male's side.

The fifth: Half sister on father's side. She deserves one-half on five conditions:

non-existence of agnate heirs, non-existence of female sisters, non-existence of inheriting descendants, non-existence of inheriting-male ancestors and non-existence of the deceased's full brothers and sisters.

72- Book of inheritors of one fourth

One fourth is inherited by two categories: the husband and a wife or more. A husband is entitled to inherit one fourth if there is a descendant inheritor. Moreover, a wife or more is entitled to inherit one fourth if there is no descendant inheritor.

73- Book of inheritors of one eighth

One eighth is inherited by one category: One wife or more; when the condition of the non-existence of descendant inheritor is met.

74- Book of the inheritors of two thirds

Inheritors of two thirds are four categories: Daughters, son's daughters, sisters, and paternal half sisters.

Daughters are entitled to receive two thirds under two conditions: that they are two or more, and that there is no relative to the father's side of the deceased.

Son's daughters are entitled to receive two thirds under three conditions: That they are two or more, that there is no relative to the father's side of the deceased, and that there is no descendant inheritor nearer to the deceased than them.

Sisters are entitled to receive two thirds under four conditions: That they are two or more, that there is no relative to the father's side of the deceased, that there is no descendant inheritor, and that there is no male ascendant inheritor.

Paternal half sisters are entitled to receive two thirds under five conditions: That they are two or more, that there is no relative to the father's side of the deceased, that there is no descendant inheritor, that there is no male ascendant inheritor, and that their is no (full) brothers or sisters.

75- Book on the inheritors of one third

Inheritors of one third are two categories: Mother and maternal brothers.

A mother is entitled to receive one third under three conditions: First, that there is no descendant inheritor. Second, that there is no a group of siblings, i.e., two or more brothers, or paternal brothers, or maternal brothers; or sisters, paternal sisters, or maternal sisters or a brother and a sister or two hermaphrodite inheritors or excluded by someone else. Third, that the case is not like any of the two ones decided by `Umar ibn Al-Khattab (may Allah be pleased with him), i.e., the existence of a husband, a mother, and a father or one wife or more, a mother, and a father for the mother in these two cases is entitled to receive one third of all the remainder which is one sixth in the first case and one fourth in the second.

On the other hand, maternal brothers are entitled to receive one third under three conditions: First, that they are two or more. Second, that there is no descendant inheritor. Third, that there is no ascendant male inheritor. However, some rulings are specific to mother's children. Amongst such rulings are that their males and females receive the same shares, that the daughters of their males are entitled to inherit, that they exclude their descendants partially, and that they inherit along with their descendants. The last point applies also to maternal grandmothers and maternal great grandmothers.

76- Book on the inheritors of one sixth

One sixth is inherited by seven categories:

First: A father; who is entitled to receive one sixth under the condition that there is a descendant inheritor.

Second: A mother; who is entitled to receive one sixth under the condition that there is a descendant inheritor or a group of siblings (two or more).

Third: A grandfather; who is entitled to receive one sixth under the conditions that there is a descendant inheritor and that there is no father.

Fourth: The son's daughter(s); who is entitled to receive one sixth under two conditions:

The non-existence of her brother(s), paternal cousin(s), or son's son(s) who is lower than her and the non-existence of the descendant inheritor who is higher (nearer to the deceased) than her except the daughter who inherits one half and causes the son's daughter to inherit one sixth.

Fifth: Half paternal sister(s); who is entitled to receive one sixth under two conditions: The existence of a sister who inherits one half as her prescribed share and the non-existence of the half paternal brother(s), daughter(s), or son's daughter(s).

Sixth: Grandmother(s); who is entitled to receive one sixth under two conditions: The non-existence of the mother and that the grandmother(s) has a descendant inheritor.

Seventh: Son or daughter of a mother when three conditions are met: The non-existence of a descendant inheritor, the non-existence of a male ascendant inheritor, and that there is only one son or one daughter to the concerned mother. The more inheriting grandmothers are of three categories: The mother's mother however high, the father's mother however high, and the mother of the father's father however high. If they are of the same level of kinship, one sixth is to be divided equally amongst them but if one of them is nearer than the other she is to get one sixth alone. Moreover, if a grandmother has two descendant inheritors; she is to receive two thirds of one sixth. An example of this is when a man marries the daughter of his paternal aunt and she has a son/daughter, the grandmother of this son/daughter is the mother of the mother of his/her mother and the mother of the father of his/her father at the same time. Another example is a man marries the daughter of his maternal aunt and she has a son/daughter, the grandmother of this son/daughter is the mother of the mother of his/her mother and the mother of the mother of his/her father. However, every grandmother of a son who is a father of a mother such as the mother of the father of a mother has no share in inheritance. The same applies to every grandmother of a father who is higher than the grandfather such as the mother of the father of the grandfather. Nevertheless, Shaykh-ul-Islam Ibn Taymiyyah (may Allah be merciful with him) holds the view that such a grandmother is entitled to inherit just as the mother of a grandfather.

77- Book of Ta`sib

The arabic word "Ta`sib" is the verbal noun of the past verb `Asaba and the present verb "ya`sibu". It is derived from the word "`Asb" which means tying, strengthening, and circling. A man's "`Asabah" are thus his sons and male kin to father's side who are called so as they strengthen each other or because they circle their concerned relative. Terminologically, `Asib is an inheritor who is entitled to receive an indefinite portion of inheritance. "Ta`sib" is the second type of heritage.

There are three categories of `Asabah: `Asabah Bil-Nafs (being an agnate relative), `Asabah Bil-Ghayr (being an agnate relative by the presence of male one), and `Asabah Ma`al-Ghayr (being an agnate relative by the presence of female one).

`Asabah Bil-Nafs are fourteen: The son, the son's son however low, the father, the paternal grandfather however high, the full brother, the half paternal brother, the sons of the full brother and half paternal brother however low, the full paternal uncle however high, the half paternal uncle however high, the sons of the full paternal uncle and the half paternal uncle however low, and the male and female emancipators.

Rulings of `Asabah Bil-Nafs are three:

First: If there is no inheritor other than them, they get the whole inheritance.

Second: They get the remnant of the prescribed shares.

Third: They do not get any portion of inheritance if nothing remains after distributing the prescribed

shares. This ruling does not apply to the son, the father, and the grandfather.

(Part No. 20; Page No. 125)

Positions of `Asabah Bil-Nafs are six: Sonship, fatherhood, grand-fatherhood and brotherhood, being sons of a brother, being paternal uncles, being sons of a paternal uncle, and Al-Wala' (Loyalty: A peculiar relationship voluntarily established which confers a right of inheritance on one or both parties connected). Each position is to be given priority over the one following it while preference inside one position is to be given to the nearest rank then the nearest relative as Al-Ja`bary (may Allah be merciful with him) said:

Give preference to the position then to the rank
After which give preference to the nearest relative

The `Asabah of the emancipator, their rulings, and positions are the same.

Scholars of inheritance (may Allah be merciful with them) mention three important rules here:

First: The `Asabah of the `Asabah of the emancipator are not to inherit unless they are `Asabah for the emancipator.

(Part No. 20; Page No. 126)

Second: The emancipator of the `Asabah of the emancipated is not to inherit except those who emancipated their father or grandfather.

Third: Women are not to inherit through Wala' except those whom they emancipated or those who were emancipated by those they emancipated.

The second category of `Asabah: Al-`Asabah Bil-Ghayr who are four: One daughter or more with one son or more, son's daughter or more with son's son or more who is of her rank whether her brother or cousin or with a son's son who is lower than her if she needs him, full sister or more with full brother or more, and half paternal sister or more with half paternal brother or more.

The third category of `Asabah: Al-`Asabah Ma`al-Ghayr who are two: One full sister or more and one half paternal sister or more with one daughter or more or one son's daughter or more.

Here are two important cases:

First case: If a person dies leaving the father of their emancipator and

(Part No. 20; Page No. 127)

an emancipator of their father, inheritance is for the father of their emancipator while there is no Wala' for the emancipator of their father. This is because, as stated earlier, one of the conditions of the Wala' for the descendant of the emancipated is that they are not affected by any slavery.

Second case: If a son and his sister buy their father then emancipate him then the concerned father owns a male slave then emancipates him then the father dies so his son and daughter inherit him for kinship then the emancipated male slave dies and he does not have family `Asabah and the prescribed shares do not take up the whole inheritance; the remaining of the emancipated slave inheritance is for the concerned son but not for his sister because of his being a son of an emancipator not an emancipator of an emancipator. This is because the position of sonship of emancipator is given priority over the position of Wala'. It is narrated that Malik (may Allah be merciful with him) said: "I asked seventy judges in Iraq about this case but they answered wrongly."

This is the reason that this case is called the "Case of Judges". And Allah (Exalted be He) knows best!

78-

Benefits

First: If a person has one or more aspects of inheritance-deserving relationship or more, he or she is to inherit in accordance with the most advanced one of them. For example, a manumitted son takes his share of inheritance as a son not as a manumitted son and similarly a woman's son who is the son of a cousin and a freed son, he is to inherit on account of being a son not a son of a cousin or a freed son, as the relation of sonship is advanced over other relations.

Second: If a person is to receive inheritance from two sides; a prescribed share and an inheritance-deserving relationship,

(Part No. 20; Page No. 128)

he takes the share of the inheritance for both cases, such as a husband of a dead wife who is a cousin to her or a maternal stepbrother who is a cousin of a dead woman.

Third: If a person has to receive inheritance from two prescribed sides, he is to receive inheritance for both of them unless one of them cancels the other and in this case he or she inherits according to the excluding case not the excluded one. For example, a maternal grandmother who is a mother of a grandmother and, in the same time, the mother of a paternal grandmother, she takes the two thirds of the third due to both prescribed shares. This is applicable to marriage to Magian women and having intercourse in doubtfulness. The example of this is a Magian man gets married to his mother who delivers a daughter and similarly a man who makes intercourse doubtfully with his mother who delivers a daughter. The daughter in both examples has two prescribed sides for inheritance; she is the daughter of the person who has sexual intercourse with the woman and a maternal stepsister, and in this case she inherits the man who has sexual intercourse as a daughter not a maternal stepsister for the daughter cancels the maternal stepsisters.

79- A Chapter on exclusion from inheritance

The issue of the exclusion from inheritance is very important in the section of prescribed shares of inheritance. Some scholars stated that anyone who is not aware of the question of exclusion from inheritance is prohibited to issue Fatwas (legal opinion issued by a qualified Muslim scholar) regarding the prescribed shares of inheritance. The term technically means an heir's total or partial exclusion from the inheritance because of the presence of a certain person.

There are two categories of exclusion:

The first category: Categorical Impediments: These are the three bars to succession we described earlier. It applies to all the heirs.

The heir who falls into this category has no impact on distributing the shares of inheritance.

The second category: Exclusion of certain people from inheritance: which includes two kinds: total exclusion from inheritance applying to all heirs except six people: Both parents, a spouse and children. The second kind is partial exclusion which applies to all heirs. It comprises seven kinds:

First: The prescribed share of heirs may be reduced. For example, the husband's share may be reduced from one-half share to a quarter. Similarly, if there is one wife or more, the share may be reduced from one quarter to one eighth.

Second: The share of the agnate heirs may be reduced because of the presence of other agnate heirs who have a superior tie of relationship.

Third: The share of the Qur'anic heirs must be reduced to that of the agnate heirs, which is less in

value. For example, the heirs who are entitled to one-half share would be given the share entitled to an agnate relative by the presence of a certain other relative.

Fourth: The share of the agnate heirs must be reduced to that of the Qur'anic heirs, which is less in value. For example, the share of the father or grandfather should be equal to that of those Qur'anic heirs.

Fifth: There is an abundance of the heirs who are entitled to a certain prescribed share. For example, there are more than one wife who are entitled to the one-fourth or one-eighth share, and there are many heirs who are entitled to the one-third or two-thirds share.

Sixth: There is an abundance of agnate heirs. For example, there are many agnate heirs who are entitled to the wealth or to the residue of the estate after distributing the prescribed shares.

Seventh: There is an abundance of people who are entitled to `Awl (increase in the number of shares of inheritance and a decrease in their amounts). The heirs of the prescribed shares are entitled to it nominally.

There are two notes: First:

The ancestors can not be excluded except by ancestors, and the descendants of the deceased can not be excluded except by descendants. As for the collateral relatives, they can be excluded by ancestors, descendants and collateral relatives. The grandfathers are excluded by the fathers, and the remote grandfather is excluded by the close one. Similarly, the grandmothers are excluded by the mothers, and the remote grandmother is excluded by the close one. The children of the sons are excluded by one son or more, and the remote grandson is excluded by the close grandson. Full brothers are excluded by the father, grandfather, son and grandson whoever low he is, according to the most correct opinion. The paternal brothers are also excluded by the said people along with the full brothers and full sister if she is an agnate relative by the presence of a certain other relative. The maternal brothers are excluded by six people: The father, grandfather, son, daughter, grandson and granddaughter.

The granddaughters are excluded by one son or more and by the daughters whose shares totaling two-thirds if the granddaughters have no agnate heir. If they have, they share with him the remainder of the estate after distributing the two-thirds. The agnate heir may be their brother, paternal cousin who has the same degree that they have, or their male descendants, when necessary. The ruling on the daughters of the son of grandson in the presence of the daughters of grandson is the same that of the daughters of the deceased's son in the presence of the daughters.

The paternal sisters are excluded by one full brother or more, by one full sister or more- if she is an agnate relative by the presence of a certain other relative- and by the full sisters whose shares totaling two-thirds if the paternal sisters have no agnate heir, who should be a paternal brother. If they have the agnate heir, they share with him the remainder of the estate after distributing the two-thirds.

Second note:

All the heirs are divided in relation to partial exclusion to four categories: First is the category which includes the heirs whose presence results in the disinheritance of another and who can not be excluded from inheritance, namely the parents and sons. Second is the category which includes the heirs whose presence does not result in the exclusion of another and who can be disinherited, namely the maternal brothers. Third is the category which includes the heirs whose presence does not result in the exclusion of another and who can not be excluded, namely the spouses. Fourth is the

category which includes the heirs whose presence results in the exclusion of another and who can be excluded, namely the rest of the heirs.

80- Chapter on Al-Mushrakah

The components of this case are a husband, a mother or grandmother or higher as long as the maternal relation is concerned, maternal stepbrothers, and full brother, full brothers and sisters or one brother and sister and not sisters or paternal stepbrothers. This case is called Al-Mushrakah due to the fact that some scholars are of the opinion that the full brothers share with the maternal half-brothers the third of the inheritance. It is entitled as well Al-Himariyah and Al-Yamiyyah and I singled it out with a full chapter owing to the well-known difference over it. However, the origin of the case is six: the husband takes half, i.e., three, the mother or grandmother takes one and the maternal half-brothers

(Part No. 20; Page No. 132)

take two and nothing for the full brothers seeing as all the prescribed shares are distributed among the inheritors already referred to. This is the opinion of Ahmad and Abu Hanifah, (may Allah be merciful with them both). Also, this view is said to be the adopted by `Aly, ibn Mas`ud, Ubayy ibn Ka`b, ibn `Abbas and Abu Musa, (may Allah be pleased with them all) and `Umar (may Allah be pleased with him) ruled with it at first.

However, according to Al-Shafi`y and Malik (may Allah be merciful with them both) the full brothers share with the maternal half-brother a third of the inheritance and it is distributed among them on account of number not gender. This opinion is ascribed to `Uthman and Zayd ibn Thabit (may Allah be pleased with them both) and `Umar ruled according to it in the end. However, the first opinion is the most correct owing to the Prophet's (peace be upon him) saying: ﴾Give the Fara'id (the prescribed shares of the inheritance) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased.﴿ Thereupon, if the husband, the mother or grandmother and maternal half-brother are given their due shares, nothing will remain for the full brothers who are to be cancelled. And Allah knows best!

81- A Chapter on grandfathers and brothers

A grandfather is the father's father; however high. Brothers are the full brethren and the paternal brethren.

Let it be known that there are two views of the Salaf (righteous predecessors) (may Allah be merciful with them) in the case of existence of both brethren and grandfathers in inheritance:

(Part No. 20; Page No. 133)

The first is: giving the brethren a share of inheritance along with the grandfather which is the view of `Aly, ibn Mas`ud and Zayd ibn Thabit (may Allah be pleased with them) with slight differences on the shares of inheritance and this is the view of Malik and Al-Shafi`y (may Allah be Merciful with them). It is also a well-known view of Imam Ahmad (may Allah be merciful with him).

The second is: considering him a father and that deprives all brethren from inheritance which is the view of ten of the Sahabah (the Companions of the Prophet, may Allah be pleased with them) such as Abu Bakr Al-Siddiq, his daughter `Aisha, the Mother of the Believers, Ibn Abbas, Jabir, Abu Musa and `Imran ibn Husayn (may Allah be pleased with them). The view is also held by a group of the Tabi`un (Followers, the generation after the Companions of the Prophet) such as Abu Hanifah, Ishaq, Dawud, Al-Muzany, Ibn Surayj and Ibn Al-Munzir. It is also one of the two narrations of Imam Ahmad which was followed by some of his followers such as Shaykh-ul-Islam Ibn Taymiyah, his disciple Ibn Al-Qayyim and the Mujaddid (a revivalist Muslim scholar) Shaykh Muhammad ibn `Abdul-Wahhab (may Allah be merciful with them) which is the correct view- in sha' Allah (if Allah wills)-because of many proofs which should be mentioned in books not here. However, this has been grasped well, then according to the first view when a grandfather exists with brethren, either there is Sahib Fard (heirs of prescribed shares of inheritance) or not. If there is no Sahib Fard with them, the grandfather will have three cases and shall be given a choice in two things;

(Part No. 20; Page No. 134)

one-third of inheritance and participation in the share and he shall be given the bigger share of them.

The first case is: The participation in the share is bigger than one-third of inheritance and its criterion is the brethren would take less than double his share and this is confined in five cases: **The first: a grandfather and a sister. The second: a grandfather and a brother. The third: a grandfather and two sisters. The fourth: a grandfather, brother and sister. The fifth: a grandfather and three sisters.**

The second case: Evenness of both matters: Participation and one-third of inheritance and he shall participate with them. Its criterion is that they (brethren) will have double his share and this is confined in three cases: The first: Grandfather and two brothers. The second: Grandfather, brother and two sisters. The third: Grandfather and four sisters.

The third case: One-third of inheritance would be better than participation, so he takes it as a prescribed share. Its criterion is the one-third would be more than the double of his participation and its forms are countless.

If they have Sahib Fard (heirs of prescribed shares of inheritance) or more, they shall have seven cases and he shall be given a choice in three things: Participation, one-third of the remaining money and one-sixth according to the bigger share.

The first case is: The participation would be more than the third of the remaining money and more than one-sixth of the money, such as a grandmother, a grandfather and a full brother.

The second is: The one-third of the remaining money would be more than participation

and more than the one-third of inheritance, such as a mother, a grandfather and three paternal brothers.

The third is: One-sixth of the money is more than participation and more than one-third of the remaining money, such as a husband, a grandfather, a grandmother and two paternal brothers.

The fourth is: Evenness of participation and one-third of the remaining money which would be more than one-sixth of inheritance such as a mother, a grandfather and two paternal brothers.

The fifth is: Evenness of participation and one-sixth of inheritance which shall be more than one-third of the remaining money such as a husband, a grandmother, a grandfather and full brother.

The sixth is: Evenness of one-third of the remaining money and one-sixth which shall be more than participation such as a husband, grandfather and three paternal brothers.

The seventh is: Evenness of three cases: participation, one-third of the remaining money and one-sixth such as a husband, a grandfather and two paternal brothers which entails some cases of rivalry in shares such as one-sixth alone, the one-quarter alone, one-half alone, one-quarter or one-sixth. When full brothers and paternal brothers exist, the full brthren shall seek power with paternal brothers and show rivalry for the grandfather if they need them. If the grandfather takes his share, the full brethren shall take over the shares of the paternal brothers and if there is one full sister, she shall have her prescribed share and the rest shall be given to the paternal brothers.

The cases of rivalry are confined in sixty-eight forms. They are based upon

two bases:

One of them is: The full brethren shall have a less share than the double share of the grandfather.

The second is: To combine with them the paternal brothers to complete the double share of the grandfather or less. This is confined in the previous five forms which are a grandfather and a full sister; a grandfather and a full brother; a grandfather and two brothers; a grandfather, a full brother and a full sister; a grandfather and three brothers. The grandfather shall have five cases with the full sisters: **The first is:** A grandfather, a full sister and a paternal sister. **The second:** A grandfather, a full sister and a paternal brother. **The third:** A grandfather, a full sister and two paternal sisters. **The fourth:** A grandfather, a full sister, a paternal brother and a paternal sister. **The fifth:** A grandfather and three paternal sisters.

He shall have three cases with the full brothers: **The first:** A grandfather, full brother and a paternal sister. **The second:** A grandfather, full brother and two paternal sisters. **The third:** A grandfather, full brother and paternal brother.

He shall have three cases with two full sisters exactly as the full brother.

He shall have one case with the full brother and the full which is: A grandfather, a full brother, a full sister and a paternal father.

He shall have one case with three full brothers exactly as the full brother and the full mother.

These are thirteen forms multiplied in the previous five cases

which are: There is no Sahib Fard (heirs of prescribed shares of inheritance)with the grandfather and the brothers.

The second: They have an heir of only one-sixth share.

The third: They have an owner of only one-quarter share.

The fourth: They have an owner of one-sixth and one-quarter.

The fifth: They have an owner of only one-half share and that will make them sixty-five forms.

The sixty-sixth form is: There are heirs of one-half and one-sixth with the grandfather and the brothers such as a daughter, a grand-daughter, a grandfather, a full sister and a paternal brother.

The sixty seventh: To have an heir of one-half share and and heir of one-eighth such as a daughter, a wife, grandfather, a full sister and a parental sister.

The sixty-eighth: to have two owners of one-third such as two daughters, a grandfather, a full sister and paternal sister.

There are four forms in addition to the mentioned four forms if there is an heir of one-half or one-eighth of the prescribed share which shall be known through examination:

Two cases with the full sister which are: One paternal brother and two paternal sisters.

The third is: With the full sibling which is the paternal sister.

The fourth is: With two full sisters which is the paternal sister.

The meaning of this is to force the grandfather to take one-sixth. The case will be confined in just four cases out of the twenty-four cases of the prescribed share of one-sixth. However, the cases of hostility would be seventy-two cases. And Allah knows best!

Chapter on Al-Akdariyyah Case

The components of this case are a husband, a mother, a grandfather, a full or paternal sister. It is called Al-Akdariyyah; for it disturbed the original number of shares of inheritors prescribed by Zayd ibn Thabit, other reasons were also stated in this regard. The original rule regarding the grandfather and brothers is that sisters should not inherit with him, neither should the brothers if nothing but one sixth (of the inheritance) is left. However, they excepted this case, and prescribed one half for the sister and one sixth for the grandfather.

Its original numbers of shares are six, half for the husband; three shares, one third for the mother; two shares, half for the sister; three shares, and one sixth for the grandfather; one share. In this case, we have a `Awl (increase in the number of shares of inheritance and a decrease in their amounts) issue as the shares increase to nine. Accordingly, the grandfather and the sister should distribute their shares according to the rule: "to the male, a portion equal to that of two females", which is four shares for three heads, in this case, the number (of shares) will be indivisible by them and the result will be a fraction. Therefore, the heads should be multiplied by the original number of shares in the case of `Awl (increase in the number of shares of inheritance and a decrease in their amounts) resulting in the number twenty seven; nine for the husband, six for the mother, eight for the grandfather and four for the sister.

(Part No. 20; Page No. 139)

Chapter on calculating the prescribed shares of inheritance

Calculating the prescribed shares of inheritance means deriving the original number of shares and share defragmentation rather than the traditional mathematics which is the study of methods for finding unknown quantities and which includes both calculations for distributing the estate and others. Calculations for distributing the prescribed shares of inheritance include deriving the original number of shares, share defragmentation, situations and forms. The original number of shares is the minimum integer that can be divided without fractions; share defragmentation is distributing the total shares of the estate to the minimum integer that can be divided without fractions; the situation is defining the shares, regardless of their beneficiaries and the form is pointing out the beneficiary of each share. The original numbers of shares agreed upon are seven; two, three, four, six, eight, twelve **and** twenty-four and there are two others that are questionable, namely eighteen and thirty-six in which the grandfather and brothers are involved

(Part No. 20; Page No. 140)

in particular.

The sound opinion is that they are original numbers of shares rather than denominators of the question; the first being the minimum integer from which each share will be extracted as a whole number with no fractions, the second being the minimum integer divisible to the shares without fractions. The total number of questions derived from these nine original numbers of shares is fifty-nine, each one includes forms reaching approximately six hundred or more. These nine original numbers are divided, as far as `Awl (increase in the number of shares of inheritance and a decrease in their amounts) is concerned, into two groups, one that involves `Awl which are six, twelve and twenty-four.

Six jumps by `Awl (increase in the number of shares of inheritance and a decrease in their amounts) up to ten, twelve up to seventeen and twenty-four to twenty-seven. When there is no `Awl, the original number of six includes eleven cases: **First,** one sixth when the heirs are a grandmother and an uncle. **Second,** two sixths when the heirs are parents and a son. **Third,** one sixth and one third when the heirs are a mother and a maternal brother. **Fourth,** one sixth and two thirds when the heirs are a mother and two full sisters.

Fifth, two sixths and two thirds when the heirs are two daughters and parents. **Sixth,** a half and a sixth when the heirs are a daughter and a daughter of one's son. **Seventh,** a half and two sixths when the heirs are a daughter, daughter of one's son and a mother. **Eighth,** a half and three sixths when the heirs are a daughter, a daughter of a son and parents. **Ninth,** a half and one third when the heirs are a husband and a mother. **Tenth,** a half and one third of the remaining amount when the heirs are a husband, a mother and a father. **Eleventh,** a half, one third and one sixth when the heirs are a husband, a mother and a maternal brother. When there is no `Awl, the original number of twelve includes

(Part No. 20; Page No. 141)

six situations: **First,** one fourth and one sixth when the heirs are a wife and a grandmother. **Second,** one fourth and one third when the heirs are a wife and a mother. **Third,** one fourth and two sixths when the heirs are a husband, parents and a son. **Fourth,** one fourth, one third and one sixth when the heirs are a wife, a mother and a maternal brother. **Fifth,** one fourth, one half and one sixth when the heirs are a husband, a daughter and daughter of one's son. **Sixth,** one fourth and two thirds when the heirs are a husband and two daughters. When there is no `Awl, the original number of twenty-four includes six questions: **First,** one eighth and one sixth when the heirs are a wife, a mother and a son. **Second,** one eighth and two sixths when the heirs are a wife, a son and parents. **Third,** one eighth and two thirds when the heirs are a wife and two daughters. **Fourth,** one eighth, two thirds and one sixth when the heirs are a wife, two daughters and a mother. **Fifth,** one eighth, one half and one sixth when the heirs are a wife, a daughter and daughter of one's son. **Sixth,** one eighth, one half and two sixths when the heirs are a wife, daughter, daughter of one's son and a mother.

On the other hand, when the original number of six involves `Awl, six jumps up to seven in four situations: **First,** one half and two thirds when the heirs are a husband and two non-maternal sisters. **Second,** two thirds, one third and one sixth when the heirs are two non-maternal sisters, two maternal brothers and a mother. **Third,** two halves and one sixth when the heirs are a husband, full sister and a paternal sister. **Fourth,** one half, one third and two sixths when the heirs are a full sister, one paternal sister, two maternal brothers and a mother. When the original number of six involves `Awl, six jumps up to eight in three situations: **First,** two halves and one third when the heirs are a husband, a full sister and a mother. **Second,** two halves and two sixths when the heirs are a husband, a full sister, a paternal sister and a maternal brother. **Third,** two thirds, one half and one sixth when the heirs are two non-maternal sisters, a husband and a mother. When the original number of six involves `Awl, six jumps up to nine in four situations: **First,** two thirds, a half

and a third when the heirs are non-maternal sisters, a husband and maternal sisters. **Second,** two thirds, a half and two sixths when the heirs are two non-maternal sisters, a husband, a maternal brother and a grandmother. **Third,** two halves, one third and one sixth when the heirs are a husband, a full sister, maternal brothers and a mother. **Fourth,** two halves and three sixths when the heirs are a husband, a full sister, a paternal brother, a maternal mother and a mother.

When the original number of six involves `Awl, six jumps up to ten in two situations: **First,** two halves, one third and two sixths when the heirs are a husband, a full sister, a paternal sister, maternal brothers and a mother. **Second,** two thirds, one half, one third and one sixth when the heirs are two non-maternal sisters, a husband, maternal brothers and a mother.

When the original number of twelve involves `Awl, twelve jumps up to thirteen in three situations: **First,** two thirds, one fourth and one sixth when the heirs are two daughters, a husband and a mother. **Second,** one half, one third and one fourth when the heirs are two a full sister, a mother and a wife. **Third,** one half, two sixths and one fourth when the heirs are one daughter, one daughter of a son, a mother and a husband.

When the original number of twelve involves `Awl (increase in the number of shares of inheritance and a decrease in their amounts), twelve jumps up to fifteen in four situations: **First,** two thirds, one third and one fourth when the heirs are two non-maternal sisters, two maternal brothers and a wife. **Second,** two thirds, two sixths and one fourth when the heirs are two non-maternal sisters, one maternal brother, a mother and a wife. **Third,** a half, a third, a sixth and a fourth when the heirs are a full sister, a paternal sister, maternal brothers and a wife. **Fourth,** a half, three sixths and a fourth when the heirs are a full sister, a paternal sister, a maternal sister, a mother and a wife.

When the original number of twelve involves `Awl, twelve jumps up to seventeen in two situations: **First,** two thirds, a third, a sixth and a fourth when the heirs are eight non-maternal sisters, four

maternal sisters, two grandmothers and three wives. This question is named Umm Al-Aramil [The Mother of Widows. Ed.] as all the heirs are female.

Second, a half, a third, two sixths and a fourth when the heirs are a full sister, a paternal sister, maternal brothers, a mother and a wife.

When the original number of twenty-four involves `Awl, twenty-four jumps up to twenty seven in two situations: First, two thirds, two sixths and an eighth when the heirs are two daughters, parents and a wife. Second, a half, three sixths and an eighth when the heirs are a daughter, a daughter of a son, parents and a wife. To summarize these three original numbers of situations (six, twelve and twenty-four) constitute forty-seven situations with and without `Awl.

The original numbers that do not involve `Awl are six: two, three, four, eight, eighteen and thirty-six. The original number of two has two situations: **First,** one half only when the heirs are a daughter and a parental uncle. **Second,** two halves as when the heirs are a husband and a non-maternal brother. The original number of three has three situations: **First,** a third when the heirs are a mother and a parental uncle. **Second,** two thirds when the heirs are two daughters and a brother. **Third,** two thirds and a third when the heirs are two non-maternal sisters and two maternal brothers.

The original number of four has three situations: **First,** a fourth when the heirs are a husband and a son. **Second,** a fourth and a half when the heirs are a husband and a daughter. **Third,** a fourth and a third of the remaining when the heirs are a wife and parents. The original number of eight has two situations: **First,** an eighth when the heirs are a wife and a son. **Second,** an eighth and a half when the heirs are a wife and a daughter.

The original number of eighteen has one situation, namely a sixth and a third of the remaining when the heirs are a grandmother, a grandfather and three non-maternal brothers. The original number of thirty-six has one situation, namely a fourth, a sixth and the third of the remaining as when the heirs are a wife, a mother, a grandfather and three non-maternal brothers. In these

six original numbers there are twelve questions added to the previous forty-seven questions derived from the previous original numbers, thus we have fifty-nine situations in total.

This exclusiveness in the above mentioned nine original numbers of situations is concerned with the situations that contain one or more prescribed share. However, if there are inheritors by virtue of consanguinity only, the original numbers of their questions could not be exclusively gathered, for the original number of shares in a situation which involves `Asabat (agnate heirs) is the minimum integer divisible to the heirs without fractions.

Then you should come to know that each situation is either to be divisible to the shares or not. If it is divisible, the shares in the situation are to be divided according to its original number. If it is not divisible into an integer number, the fraction is either concerned with one, two or more groups. If it is concerned with one group of heirs, the relationship between the heads and the shares of one group should be either Tabayun (two numbers cannot be divided by each other or by a third number) or Tawafuq (two numbers cannot be divided by each other but have a common factor). If there is Tabayun, you should multiply the heads of the heirs (i.e., the parts of the share) by the original number of shares, and the number resulting from `Awl if it involves `Awl, to get the minimum integer divisible to the heads of the share without fractions, so each head will get the same number the whole group gets out of the original number. If there is Tawafuq, you multiply the Wafq (corresponding proportionate number) which is the part of the share by the original number of shares along with the number resulting from `Awl if it involves `Awl (increase in the number of

shares of inheritance and a decrease in their amounts), so you get the minimum integer divisible to the heads of the share without fractions, so each head will get the same number of the Wafq which the whole group gets out of the original number.

An example of a situation involving Tabayun is a husband and five sons, the original number being four, out of which the husband deserves one fourth (i.e., one) and the remaining three are for the sons whose heads are five and hence there is Tabayun between their heads and share. So you multiply their five heads (i.e., part of the share) by the original number of shares (i.e., four) to get twenty, out of which the husband gets five resulting from multiplying his original share (i.e. one)

by the part of the share (i.e., five). The sons have three out of its original number, so you multiply the three by the part of the share (i.e., five) to get fifteen for each one of them three of it which is the same number the whole group gets out of its original number.

An example of Tawafuq is a question of a wife and six parental uncles, the original number of it being four, out of which the wife gets a fourth (i.e., one) and the remaining three are for the paternal uncles, so the Tawafuq ratio is one third as their heads are six. You multiply the Wafq of the heads which is two and which is the part of the share by the original number of shares (i.e., four) to get eight, out of which the wife gets two and the paternal uncles get six, each one of them gets the same number of the Wafq (i.e., one) of the group out of the original number of shares. If the fractions in a situation are concerned with two or more groups - not exceeding four groups - the relationship between each group and its shares is to be either Tabayun or Tawafuq. If it is Tabayun, you should count all the heads in the groups; if it is Tawafuq, you should count the Wafq, then you should consider all the counts in proportion to the four matters (Tamathul, Tadakhul, Tawafuq and Tabayun) Tamathul means (Equivalency) which means that the numbers of the heads of two groups or more are equal such as two and two. Tadakhul means that the bigger number is divided by the smaller number without fractions or that the smaller number is divided into the bigger one or that the smaller number is a separate part of the bigger number. Any of these definitions is right, such as is the case with two and four. Tawafuq means that the two groups have a common factor, but cannot be divided by each other such as four and six. Tabayun means that the groups are prime numbers such as five and three. If the question involves Tamathul, it is enough to

multiply one of the equivalents which is part of the share by the original number of shares - along with the number resulting from `Awl if it is involved - to get the final number of the shares. If there is Tadakhul, it is sufficient to multiply the bigger number which is the part of the shares by the original number and the `Awl, if any, to get the final number of shares. If there is Tawafuq, you should multiply the Wafq of one of them by the whole of the other to get the part of the share which you should multiply by the original number along with the `Awl, if any, to get the final number of shares. If there is Tabayun, you multiply them by each other to get the part of the share and then multiply it by the original number along with the `Awl, if any, to get the final number of shares.

An example of Tamathul is four wives and four paternal uncles, its original number being four, the wife gets one fourth (i.e., one) which is in a relationship of Tabayun with their heads and the paternal uncles get the remainder which is in a relationship of Tabayun with their heads. You will find that the relationship between the heads of the paternal uncles and the wives is Tamathul, so it is sufficient to multiply one of them which is the part of the share by the original number of shares (i.e., four) to get sixteen, out of which the wives will get four shares, one for each one of them as the one set for their group out of the original number of shares. The paternal uncles get twelve shares, three for each one of them as the three set for their group out of the original number of shares.

An example of Tadakhul is the situation of two maternal brothers and eight paternal brothers, its original number being three, the maternal brothers get one third, i.e., one share which is in a relationship of Tabayun with their heads, the paternal brothers get two shares which is in a relationship of Tawafuq with their heads by one half, so the Wafq of the question is four which is a relationship of Tadakhul with the heads of the maternal brothers (two), so you multiply the bigger number which is the part of the share by the original number of shares (three)

to get twelve, out of which the maternal brothers will get four, two for each one of them and the paternal brothers will get eight shares, each one of them gets one share.

An example of Tawafuq is a situation of four wives, a full sister, twelve paternal sisters and ten paternal uncles, its original number being twelve, the wives get the one-fourth, i.e., three shares which is in a relationship of Tabayun with their heads which you should count (four), the full sister gets one half, i.e., six shares, the paternal sisters get one sixth (to complete the two-thirds of the inheritance), i.e., two shares which is in a relationship of Tawafuq with their heads by the half, so you should count the Wafq of their heads which is six and the remaining one share is for the paternal uncles which is in a relationship of Tabayun with their heads which you should count (ten). Considering the counts - four - six - ten, you find they have a relationship of Tawafuq by the halves, so you multiply the Wafq of four (two) by the Wafq of ten (five) to get ten which you multiply by six to get sixty which is the part of the share which you multiply by the original number of shares (twelve) to get seven hundred and twenty which become the final shares of the situation. The wives have out of the original number of shares three shares which you multiply by the part of the share (sixty), so that they get one hundred and eighty shares, each one of them gets forty-five shares. The full sister has out of the original number of shares six shares which you multiply by the part of the share (sixty), so she gets three-hundred and sixty shares. The paternal sisters have out of the original number of shares two shares, which you multiply by the part of the share (sixty) so they get one hundred and twenty shares, ten for each one. The paternal uncles have out of the original number of shares one share which you multiply by the part of the share (sixty), to get sixty, ten shares for each one of them.

An example of Tabayun is a question of five daughters, three grandmothers, four wives

and seven paternal uncles, its original number of shares being twenty-four, the daughters get the third of the inheritance, i.e., sixteen shares, which is in a relationship of Tabayun with their heads (five) so you should count them. The grandmothers get one sixth of the inheritance, i.e., four shares, which is in Tabayun with their heads (three) so you should count them. The wives get one eighth of the inheritance, i.e., three shares, which is in Tabayun with their heads (four) so you should count them. The paternal uncles get one share which is in Tabayun with their heads (seven) so you should count them. Considering the counts, you find them in Tabayun with each other, so you multiply them by each other to get four-hundred and twenty shares which is the part of the share you multiply by the original number of shares (twenty-four) to get ten-thousand and eighty shares, out of which the daughters get six thousand, seven-hundred and twenty shares, for each one thousand, three hundred and forty-four shares. The grandmothers get one thousand, six hundred and eighty shares, for each one five hundred and sixty shares. The wives get one thousand, two hundred and sixty shares, for each one three hundred and fifteen shares. The paternal uncles get four hundred and twenty shares, for each one sixty shares.

You should know that of the above mentioned nine original numbers of shares, some involve fractions only in one group, which is the original number of two. Some involve fractions in two groups, like the original number of three, four, eight, eighteen and thirty six. Some involve fractions in three groups,

which is the original number of six. Some involve fractions in four groups like the original numbers of twelve and twenty-four. Fractions could not be in more than four groups as we mentioned above. And Allah knows best!

84- Chapter on Munasakhah

It is derived from the Arabic word "Naskh" which means transmission, abrogation and removal. Technically, it refers to a person who dies, then one or more of his inheritors die before his estate is distributed among them. It is one of three cases:

The first case: The inheritors of the second dead person are the rest of the inheritors of the first dead and the shares prescribed for them from the second are the same as their shares from the first dead. This case is to be abbreviated before calculation which is entitled "abbreviation of questions" and it does not matter if they entail their shares of inheritance due to having an inheritance-deserving relationship or there is an inheritance-deserving relationship along with a prescribed share and it becomes an inheritance-deserving relationship. For example, a man dies and leaves ten sons and all of them die one after the other except two. In this case, the question is abbreviated to be of two sons. The same is true if there is a wife to the first dead who, in the same time, is the mother of the sons and she dies as well. Also, this applies if the inheritors deserve shares of inheritance due to having an inheritance-deserving relation and a prescribed share. For example, a man dies and leaves five maternal stepbrothers who are his cousins. Then they die successively except two. This question is abbreviated to be of two maternal stepbrothers and each one of them takes one which is his share according to the two sides of inheritance, i.e., their prescribed share and the inheritance-deserving relationship. If they are to inherit the deceased through having a prescribed share, there are three conditions that are to be met; First: the inheritors of the second dead person are the rest of the inheritors of the first dead; Second: their prescribed shares are the same and the Third:

the case of the first deceased has `Awl (increase in the number of shares of inheritance and a decrease in their amounts) due to the share of the second deceased

whether one or more persons. For example, a woman dies and leaves a husband, full sister and maternal stepsister. Then the husband gets married to the maternal stepsister who dies after that while the estate of his first wife has not been distributed yet. This question, is to be abbreviated to be two; one for the husband and one for the full sister.

As for abbreviation after calculation it is entitled "abbreviation of shares". It occurs when shares become identical and determined in parts like half, a third or the like. In this case, the question should go through Tawafuq (two numbers cannot be divided by each other but have a common factor) to determine its Wafq (corresponding proportionate number) and the Wafq of each share. For example, a man dies and leaves a wife, a son and a daughter. Then, the daughter dies and leaves her mother and brother. The common denominator of the first question is eight and its integral factor is twenty four; the wife takes three, the daughter takes seven and the son takes fourteen. Then, the second question is from three. Consequently, there is Tabayun (two numbers cannot be divided by each other or by a third number) between the second question and the share of the second deceased (the daughter). Then, the first question is multiplied by the second which turns in seventy two and this question is entitled "the inclusive question." The share of the wife (the mother in the second

case) is sixteen and the share of the son is fifty six. The corresponding proportionate number is eighth and therefore the inclusive question returns to its eighth and each share returns to its eighth. The share of the son will be seven and the share of the wife will be two.

The second case: It occurs if the inheritors of every dead person are not to inherit anyone other than him. In this case, the original number is to be determined and every inheritor's share is to be defined. Then, one should make a separate question for each deceased and distributed his or her estate among the inheritors. Then, there will be either division, Tabayun or Tawafuq in the case; if the shares are divided, the original number of the second situation will be that of the first. If they do not, the situation is of two cases; either has Tabayun and in this case the common denominator of the situation is to be determined, or it has Tawafuq, then the Wafq should be defined. Then, one is to deal with it

according to the four ways (Tamathul, Tadakhul, Tawafuq and Tabayun) mentioned above and what comes of it is to be multiplied by the first question to give the common denominator of the question. Then, everyone's portion is to be multiplied by what comes of it and the same is true for all the shares of each deceased. The outcome is for the inheritors to be divided among them. For example, a man dies and leaves three sons and his estate remains untouched until all his sons die, one leaving two sons, another leaving three and the third leaving four. The first question is from three and each one takes one, the question of the first dead son is from two, the question of the second is from three and that of the fourth is from four. There is Tabayun (two numbers cannot be divided by each other or by a third number) between the questions and shares. Consequently, the questions are to be counted in light of the four ways (Tamathul, Tadakhul, Tawafuq and Tabayun). One finds that there is Tadakhul (Tadakhul means that the bigger number is divided by the smaller number without fractions or that the smaller number is divided into the bigger one or that the smaller number is a separate part of the bigger number,) between the first and the third questions and Tabayun between the second and the third questions. Then, the second question (two) is to be multiplied by the third (four) that results in twelve and this number is to be multiplied by the first question (three) that turns in thirty six. The share of the first deceased is one multiplied by twelve that equals twelve and each one of his sons takes six. The share of the second is like the first divided on his three sons so each one of them takes four and the third question is similar so each one of the sons takes three.

The third case: The inheritors of the second deceased are the rest of the first deceased but their shares are different or that other people inherit along with them. In this case, the original number of the first question is to be determined and the shares of each inheritor are to be defined accordingly. After that, there should be a separate case for the second deceased and the shares of his inheritors are to be defined and the common dominator should be determined as well if necessary. Then, there must be division,

Tawafuq or Tabayun. If the question is divided the common dominator of the first will be that of the second. If there is Tawafuq then both questions are to be compared and the common dominator is determined to form the inclusive question. Then the share of each inheritor is determined and multiplied by the Wafq (corresponding proportionate number) of the second question and those who have a share in the first question take it multiplied by the second question and who entails a share in the second takes it multiplied by the shares of the one he inherits.

The example of a question involving division is that a person dies leaving a wife, a daughter and a full brother. Then her daughter dies leaving a husband and son. The first question is from eight; the wife takes the eighth (one), the daughter takes the half (four) and the remainder is for the brother. The second question is from four; the husband takes the fourth (one) and the remainder is three which is

the shares of the son while the shares of the dead daughter is four that is divided by its question.

The example of Tawafuq is that a woman dies leaving a husband, a daughter and a brother. Then the daughter dies and leaves a husband and a son. The first question is from four; the fourth for the husband, the half for the daughter and the remainder is for the brother. Also, the second question is from four; the husband takes the fourth and the remainder is for the son. Then one finds that there is Tawafuq on half and in this case it is to be multiplied by the first question (four) that turns in eight which is to be divided by the second. The same is true in the case of the share of the brother.

The husband takes in the second question one that is multiplied by the value of the shares of the inherited woman that will be three by one equals three. The share of the son is three multiplied by the share of the inherited woman that turns out to be three.

An example of Tabayun is that a man dies and leaves a mother, a paternal stepsister and an uncle, then the paternal stepsister dies leaving a husband and a daughter. The first question is from six; the share of mother is the third (two), the share of the paternal stepsister is half (three) and the remainder is for the uncle (one). The second question is from four; the husband takes the fourth (one) and the remainder is for the son (three). Then the second question is to be compared to the shares of the deceased that are three and this is Tabayun. The second question (four) is to be multiplied by the first (six) that gives twenty four. The mother took in the first two that is to be multiplied by four, so she takes eight. The uncle took in the first one that is to be multiplied by the second (four) so his share is four. The husband's share in the second is one multiplied by the shares of the inherited woman so his share is three while the share of the son was three multiplied by three so his share is nine. The same applies if a third or more persons die. Always, the inclusive question is entitled "the first question" and the following question is entitled "the second question."

Chapter on distributing estates among heirs

A estate denotes inheritance left behind by a dead person. Distributing estates is the targeted benefit of the science of Fara'idh (inheritance). The previous rooting and correction of ideas were means leading to it. A estate can be one of two divisions:

Either they are divisible or indivisible estates. If it is divisible, such as dirhams, dinars, quantities, measures and the like, it can be divided through one of five ways. These ways are based on four digits attached to each other through a separate arithmetic progression, which is a sequence of numbers such that the difference of any two successive members of the sequence is a constant, which is a great rule to infer unknown conclusions. To clarify, the ratio of each heir's share to the denominator of the problem is equal to each heir's share of the estate compared to the total estate. Thus, we have four digits: First: Each heir's share of the arithmetic question, Second: Denominator of the question, Third: His share of the estate, which is anonymous, and Fourth: The estate.

The first way: Calculating each heir's share in the problem to the total of the problem and thus giving him a share of the estate equal to such a share. This is the most beneficial and common way as it is effective in both divisible and indivisible estates. For example, suppose the heirs are a husband (of the deceased), mother, full or paternal half sister. The least common denominator of the problem will be six which will be increased by `Awl (increase in the number of shares of inheritance and a decrease in their amounts) to eight, the husband receiving one-half, three, the sister receiving the same and the mother receiving one-third, two. Suppose that the estate is twenty dirhams in total. Deserving one-fourth and one-eighth in the mathematical problem, the husband shall receive one-fourth and one-eighth of the estate, which is 7.5 dirhams. The same applies to the sister's share. Deserving one-fourth in the problem, i.e., two, the mother shall receive one-fourth of the estate which is five dirhams.

The second way: Multiplying the first digit, each heir's share of the common denominator, by the fourth digit, i.e., the estate. The resulting number should be then divided by the second digit, i.e., the denominator, to produce the heir's share of the estate, which is the third anonymous digit. To use the example above, we multiply the husband's share, i.e., three, by the total estate, which is twenty. The result, sixty, will then be divided by the denominator, which will give 7.5, which is his share of the estate. The same will be applied to the sister, which will produce the same result. We will then multiply the mother's share, i.e. two, by the estate, twenty. The result, forty, will be divided by the denominator which will give five, which is her share of the estate.

The third way: Dividing the fourth digit, which is the estate, by the second digit, which is the denominator. The resulting number, considered as a part of the share, will be multiplied by the first digit, which is each heir's share, to produce the heir's share of the estate, i.e., the third anonymous digit. To use the example above, the estate, twenty, will be divided by the denominator, eight. The resulting number, 2.5, will in turn be multiplied by the husband's share, three, to produce the result

mentioned above. The same will be applied to the sister's and the mother's share.

The fourth way: Dividing the second digit, the denominator, by the fourth digit, the estate. The result may be an integer, a common fraction or an improper fraction. In the case of an integer, you should divide each heir's share by it. The result will be

the third anonymous digit, i.e., the heir's share of the estate. In the case of an improper fraction, we will multiply the integer by the denominator of the fraction and do the same with each heir's share and then divide the former by the latter. The result will be the heir's share of the estate. In the case of a common fraction, we will multiply each heir's share by the denominator and then divide the result by the numerator. The result will be the heir's share of the estate. To use the example above, the problem's common denominator, eight, will be divided by the estate, twenty, to give two-fifths. We will then multiply the husband's share, three, by five and then divide the result by two, the numerator, to give 7.5. The same will be applied to the sister's and the mother's shares.

The fifth way: Dividing the second digit, the common denominator, by the first digit, each heir's share in the problem. The result can either be an integer or an improper fraction. In the case of the former, we will divide by it the fourth digit, the estate. The result will be the share of the heir by whose share the denominator of the problem was divided, which is the third anonymous digit. In the case of the latter, we will multiply the integer by the denominator of the fraction, then multiply the fourth digit, the estate, by the same and then divide it by the numerator of the integer. The result will be the third anonymous digit. To use the example above, we will divide the problem, eight, by the mother's share, two, to give four, by which we will divide the estate, twenty, to give five,

which is her share of the estate. Likewise, the problem will be divided by the husband's share, three, to give two and two-thirds. We will then turn the two into a fraction to be four-halves whose numerator we will multiply by two to give eight. We will then multiply the estate, twenty, by three to give sixty, which we will divide by eight to give 7.5. The same will be applied to the sister's share.

If the estate is indivisible, such as real-estates, animals and the like, there will be two ways:

The first way: The ratio approach, which means calculating each heir's share to the problem and then giving him such a ratio of the estate. Actually, this is the same as the first way above.

The second way: Approach of the Qirat (one-third of one-eighth) which is a common denominator of 24. Thus, to know the Qirat of the problem, you should divide it by the Qirat's denominator. Moreover, to know each heir's share of Qirats, you should divide his share of the problem by the Qirat, if it is an odd number (not capable of being evenly paired) such as three and five. The result will be the Qirat's of the respective heir. In the case of an even number (an integer which is a multiple of 2), such as four and six, we will analyze it to its sides, which is the parts of which it consists, and then divide each heir's share by such sides beginning with the littler and subsequent sides. The result after dividing by the last (greater) side will be

the Qirats or parts of the Qirat of the respective heir.

Following is an example of the case of an odd number: Heirs are wife, two daughters and three paternal uncles. The least common denominator of the problem is 24 and the common denominator is 72 and thus Qirats are three. The wife's share, nine, will be divided by the Qirats to give three Qirats. The two daughter's share, 48, will be divided by three to give 16 Qirats each deserving eight.

Each uncle's share, five, will be divided by three to give one Qirat and two-thirds.

Following is an example of the case of an even number: Heirs are four wives, two daughters and three paternal uncles. The least common denominator is twenty four and the common denominator is two hundred eighty eight and thus Qirats are twelve with the sides three or four. Each wife's share, nine, will be divided by the littler side, three, to give three, which will be divided by the greater side, four, producing three-fourths of a Qirat. Each daughter's share, ninety six, will be divided by the littler side, three, to give thirty two, which in turn will be divided by the greater to give eight Qirats. Each uncle's share, twenty, will be divided by the littler side, three, to give six and there will remain two, which will be made the denominator of the littler. The resulting six will be in turn divided by the greater side, four, to give one and there will remain two, which will be made the denominator of the greater. Calculated to the greater side, those remaining two will equal one half of it and thus the result will be one Qirat (the result of the previous division) and half. By calculation the remaining two made as the denominator of the littler side, we will find out that they equal two-thirds of it. By calculating the littler side to

the greater, we will come to the conclusion that it equals one-fourth of it - actually, any side is considered one of the side greater than it. Thus, the littler side equals two-thirds of one-fourth of a Qirat (i.e. one-sixth of a Qirat). Accordingly, the final share of each uncle is one Qirat and two-thirds. In case the Qirat is a common fraction, we will multiply each heir's share by the denominator and then divide it by it. The result will be the Qirats deserved by the respective heir. For example, heirs are husband, two daughters and paternal uncle. The least common denominator of the problem is 12, the husband receiving one-fourth, three, the two daughters receiving two-thirds, eight, and the uncle receiving the remainder, one, and thus the Qirat will be one-half of a share. We will then multiply the husband's share by the denominator, two, to give six, which we will divide by one, the numerator, to give six Qirats.

The same will be applied to the daughters' and the uncle's shares. If the Qirat is an improper fraction, we will multiply the integer by the denominator, multiply each heir's share by the denominator and then divide it by the whole Qirat. The result will be the deserved Qirats of the respective heir. For example, heirs are a wife, two sisters and three paternal uncles. The least common denominator of the problem will be twelve, the wife receiving one-fourth, three, the two sisters receiving two-thirds, eight, and the uncles receiving the remainder, one. By dividing the one share by the three uncles, we will get a fraction of one-third for each uncle. Thus, we will multiply three, the denominator, by the denominator of the problem, twelve, to give thirty six, the wife receiving nine, the two sisters receiving twenty four and the uncles receiving three, i.e., one for each. The Qirat of the problem is one and half. Thus, we will turn it into one fraction, i.e., three-halves.

We will then multiply the wife's share, nine, by the denominator, two, to give 18, which we will divide by the numerator, three, to give six Qirats. The same will be applied to the shares of sisters and uncles. However, if you want to know the deserved Qirats of each heir through any of the five ways above, you can do so by putting the denominator of the Qirat instead of the estate, which is the fourth digit, and continue the steps.

86- Chapter on the inheritance share of "Khuntha

Mushkal", fetus and missing person

What is meant by Khuntha Al-Mushkal (hermaphrodite) is the person who has the genital organs of both sexes or only a hole that resembles neither of them. It can be one of only the following categories of heirs: children, sons' children, brothers, brothers' children, paternal uncles, paternal uncles' sons and Wala' (a slave's loyalty to his master after being emancipated). The Khuntha has two cases, it is probable that their gender will be determined or otherwise. If it is probable to determine their gender being young, they and other heirs will be given the least probable shares if they demanded distribution of the estate and the remainder will be suspended until their gender is determined. There are many signs that can determine their gender, such as urinating from one of the two genital organs they have. However, if they urinate from both of them, the previous will be the determiner. If they urinate from them simultaneously, the more discharging will be the determiner. Another sign is menstruation, growth of breasts and growth of a beard. If it is improbable that their gender will be determined, such as if they die while young or reach maturity and their sex was not determined, they will be entitled to half of a male share and half of a female share if one of them is greater than the other. However, if both shares

are equal, they will be entitled to a full share. Moreover, if they are considered only a male heir, they will be entitled to half of a male's share. If they are considered only a female heir, they will be entitled to half of a female's share.

As for the first case (where it is probable to determine their gender and heirs demanded division of the estate), there will be two mathematical problems, if there is one Khuntha, giving four suppositions from which we will apply the most certain and suspend the remainder until the gender is determined. For example, someone died leaving behind a son, daughter, a young Khuntha. The common denominator of the first problem supposing they are a male will be five, the son receiving two, the daughter receiving one and the Khuntha receiving two. The common denominator of the problem supposing they are a female will be four, the son receiving two, the daughter receiving one and the Khuntha receiving one. Thus, the Khuntha's share is not identical in both problems. Therefore, we will multiply the first common denominator by the second to give twenty. The more harmful to the shares of the son and the daughter is considering the Khuntha a male. Thus, we will divide shares based on the problem supposing they are a male. Accordingly, the son's two shares will be multiplied by the common denominator of the problem supposing they are a female, four, to give eight. By multiplying the daughter's share, one, by the same common denominator, she will be entitled to four. Moreover, the most harmful to the Khuntha is considering them a female. Therefore, they will receive a share based on the problem supposing they are a female. Their share therein, one, will be multiplied by the common denominator of the problem supposing they are a male, five, to give five. Accordingly, the three remaining shares will be suspended until their sex is determined. If they turn out to be a male, they will be entitled to them. Otherwise, the son will be entitled to two

of them and the daughter will be entitled to one.

As for the second case (where it is improbable to determine their gender

due to them dying while young or reaching maturity without determination), we will make two mathematical problems as in the first case, which will give also four suppositions. We will give each problem a common denominator and multiply them by each other to give another denominator which we will multiply by two (the two cases). We will then add the shares of each of them in both problems to each other and then divide the result by two to produce the share of each. Following is an example of difference of the Khuntha's share in both problems: suppose that heirs are a son and a Khuntha (child of the deceased). The common denominator of the problem supposing they are a male is two, each receiving one. The common denominator of the problem supposing they are a female is three, the son receiving two and the Khuntha receiving one. Thus, the Khuntha's share is not identical in both problems. Therefore, we will multiply the common denominator of the first problem by that of the second to give six, which we will multiply by two (the two cases) to give twelve. The son is entitled to half of the estate in the first problem, six, and two-thirds in the second problem, eight, in the second problem, fourteen in total. We will divide them by two to give seven, which is their share. The Khuntha is entitled in the first problem to half of the estate, six, and one-third in the second problem, four, i.e., ten in total. We will divide them by two to give five, which is their share. However, if the Khuntha's shares in both problems are identical, such as if they are a maternal half brother or sister, they will receive their full share whether it is probable to determine their gender or otherwise.

Following is an example of the Khuntha receiving their share of inheritance supposing they are a male only. Suppose that heirs are two daughters, a paternal half brother's child (Khuntha) and a paternal uncle's son. The common denominator of the problem supposing they are a male is three, the two daughters receiving two-thirds, two, and the Khuntha receiving one. The common denominator of the problem supposing they are a female is three too, the two daughters receiving

two-thirds, two, and the remainder, one, will be received by the paternal uncle's son. Thus, the two problems are of identical share distribution. Therefore, we will apply one common denominator multiplying it by two (the two cases), to give six. The two daughters are entitled to two-thirds of the estate in the first problem, four, and the same in the second problem, i.e., eight in total. They will be divided by two to give four which are their share. The Khuntha is entitled to one-third of the first problem, two, which will be divided by two (the two cases) to give one. The paternal uncle's son is entitled to one-third in the second problem, two, which will be divided by two to give one. Following is an example of the Khuntha receiving their share of inheritance supposing that they are a female only. Suppose heirs are a husband, a full sister and a paternal half brother or sister (Khuntha). The common denominator of the problem supposing they are a male is two, the husband receiving half, one, and the full sister receiving the other half, one. The common denominator of the problem supposing they are a female is six, the husband receiving half, three, the full sister receiving half, three, and the Khuntha deserving one-sixth, one, as a completion of two-sixths. Thus, the denominator will be increased through `Awl (increase in the number of shares of inheritance and a decrease in their amounts) to seven. We notice that share distribution in both problems is not identical. Therefore, we will multiply both denominators by one another to give fourteen, which will be multiplied by two (the two cases) to give twenty eight. The husband is entitled in the first problem to one-half of the estate, fourteen, and to three-sevenths in the second problem, twelve, i.e., twenty six in total. They will be divided by two to give thirteen. The same applies to the full sister. The Khuntha is entitled to one-seventh of the estate in the second problem, four, which will be divided by two to give two. However, if the problem contains two or more Khunthas, the number of problems will be doubled in proportion with their cases. Thus, there should be four problems for two Khunthas because their cases are four and there should be eight problems for three Khunthas as their cases are eight, and so on.

Thus, the addition of one increases their cases to the number they were before, e.g., four of them would have sixteen cases and five would have thirty two and so on.

The way to work it out is to give their cases the four suppositions above if there is one Khuntha. We are, accordingly, then to infer the common denominator. Then, if it is probable to determine their gender, all heirs will be dealt with according to the most harmful share distribution to them and the remainder shall be suspended until their gender is determined. If it is improbable to determine their gender, the common denominator shall be multiplied by their cases and the result shall be the denominator of all problems. Then, we will divide the total share of each heir of all problems by their cases and the result will be each heir's respective share of the estate. This is if there is one Khuntha. However, you may also divide the denominator of all the cases by each problem of the Khuntha problems and the result will be a part of each heir's share. Thus, it will be multiplied by each heir's share to give each heir's respective share. We will then add the shares of each heir to each other and then divide them by the number of cases to give each heir's respective share of the estate. For example, suppose heirs are a son, two Khuntha children of the deceased who are older than the son. The common denominator of the problem supposing they are a male is three and that of the problem supposing they are a female is four. There is another case supposing that the older child is a male

and the younger is a female whose denominator is five and there is another case supposing the contrary whose denominator is also five. There is a difference between the first and the second problem. Therefore, we will multiply them by each other to give twelve. Moreover, there is identity between the third and the fourth problems. Therefore, we will take one of them, five. Considering both results, we will find that there is a difference between five and twelve

and we will, therefore, multiply them by each other to give sixty which will be the denominator of the four problems. If it is probable to determine the gender of both Khunthas, the son, in the problem supposing they are a male, will be entitled to the most harmful share distribution to them and each of the two Khunthas shall be entitled to the share distribution assigned by the problem supposing that one is a female and the other is a male as it is the most harmful share distribution to them. The remainder shall be suspended until their gender is determined. If it is improbable to determine their gender, the denominator of all problems, sixty, shall be multiplied by the four cases of the two Khunthas to give two hundred forty.

Based on the way we applied above concerning the case when there is one Khuntha, the son will be entitled to one-third of the estate, eighty, in the problem supposing they are a male to half of the state, one hundred twenty, in the case supposing the older to be a male and the younger to be a female to two-fifths, ninety six, and to the same share in the problem suggesting the contrary. Added to each other, the total will be three hundred ninety two, which will be divided by four, the four cases, to give ninety eight. The same will be applied to each of the two Khunthas.

According to the second way, we will multiply the denominator, two hundred forty, by the problem supposing they are a male to give eighty which is a part of all shares. We will then multiply it by the son's share, one, to give eighty and multiply by it the share of each Khuntha to give eighty for each. We will then divide the denominator by the problem supposing they are a female to give sixty, which is a part of all shares. We will then multiply it by the son's share to give

one hundred twenty and multiply by it the share of each Khuntha, one, to give sixty for each. We will then multiply the denominator by the problem supposing the older to be a male and the younger to be a female to give forty eight, which is a part of all shares. We will then multiply it by the son's share, two, to give ninety six, multiply by it the share of the older Khuntha, two, to give the same and multiply by it the share of the younger Khuntha, one, to give forty eight. We will also divide the denominator by the problem supposing the older to be a female and the younger to be a male to give forty eight, which is a part of all shares. We will then multiply by it the son's share, two, to give ninety six as was in the previous case, multiply by it the share of the older Khuntha, one, to give forty eight and multiply by it the share of the younger Khuntha, two, to give ninety six. By adding the son's shares, we will get a total of three hundred ninety two, which will be divided by the four cases to give ninety eight as inferred above. By adding the shares of the older Khuntha, we will get a total of two hundred eighty four, which will be divided by the four cases to give seventy one. By adding the shares of the younger Khuntha, we will get a total of two hundred eighty four also, which will be divided by the four cases to give seventy one.

Chapter on the Ruling of pregnancy

As for the unborn, it does not inherit, nor can it be inherited from except under two conditions. The first is that the unborn exists in the womb at the time of the death of the inherited even if it is just a sperm. This becomes apparent by its birth taking place less than six months after the death of the inherited, whether the unborn is a legitimate child to the husband or bondsman or illegitimate. This is also true if birth is given to the unborn after six months with a maximum of four years. If the fetus is a child of the marriage bed to a husband whom she has intercourse with or a master whom she has intercourse with, then his existence is unverifiable; due to the possibility of it being due to an incident of intercourse. If however the husband or master has not had intercourse due to his absence, his abstaining or other reasons, then the child's existence is verified in the same way as if he was illegitimate. If she gives birth to him four years after the death of the inherited then his existence is not verified ever; because the maximum time of pregnancy is four years, some scholars are of the opinion that the period of pregnancy has no limit, which is the most accurate evidence.

The second condition is that it is delivered and completely detached living independently. This is known by a scream, sneeze, by breastfeeding or the like. If a person dies and a heir is born then it should inherit. The share of the unborn is put aside on the basis of two boys or two girls, and everyone is given their

definite share. Those whose share is not affected are given their complete share such as, a grandmother, and anyone whose share is affected by the unborn child. They are given the prescribed amount, and whoever does not inherit except after certain recognitions should not be receive anything; when the baby is born and takes his share then whatever remains is their share. If more is needed due to only having put aside the share of two unborn children when in fact three or more were born, then if the wealth was divided it should be returned. Pregnancy is entitled to six parts. This is because the unborn is completely delivered and living a separate life, or not, in the first case the unborn is either one male, or one female, or one male and one female or two males or two

females, this adds up to six parts. If the unborn are more than two, it is a rare occurrence and therefore should not be accounted for.

The rule of calculating the amounts due to heirs when an unborn is involved should each be done separately. It should all be added up in portions of four, and the outcome after this should equal all the sums which should then divided. The sum of all the calculations is the overall amount which should be divided according to the entitled portions of each person, and this is the amount which each person is entitled to. Then the share of each of the heirs in each calculation should be multiplied by their wealth, and whatever the outcome is becomes their share of it. After knowing what each person is entitled to in each sum, one whose share is not affected should be given it completely. As for those whose share is affected, they should only be given the lesser amount for it is the amount of certainty. One who does not inherit except due to certain conditions should not receive anything. Anyone who knows the previous information should correct their inheritance if an unborn child is involved.

An example illustrated by this rule is if a person

dies and has a mother who is pregnant from his father and two maternal brothers, the calculation of a dead unborn is from six: which should be divided into three, the mother is entitled to one, and the two maternal brothers are entitled to two. As for the calculation of a completely delivered, detached child is from six if the child is only one male, the mother is entitled to a sixth which is one, and the two maternal brothers are entitled to a third which is two, what remains which is three is the share of the unborn. If the unborn is only one female then the calculation is also from six: the mother is entitled to a sixth which is one, and the maternal brothers are entitled to a third which is two, and the unborn is entitled to half which is three. If the unborn is one male and one female then the calculation is the same, the mother is entitled to a sixth which is one, the two maternal brothers are entitled to a third which is two and what remains which is three is for the unborn. It can also be calculated from twelve, the mother is entitled to two, and the maternal brothers are entitled to four which leaves six for the unborn, this is also the calculation if the unborn are two females, the calculation can also be from seven, the mother is entitled to a sixth which is one, the two maternal brothers are entitled to a third which is two and the unborn are entitled to two thirds which is four. Between the first and second calculations there are differences; therefore, base it on the larger sum which is from six, then compare it with the third and fourth calculations, you will find a similarity between them and therefore stick to one of them which is six, then compare it to the fifth calculation and you will find a difference, therefore contempt yourself with the bigger number which is twelve, then compare it with the sixth calculation which is from seven, you will have a difference which you should multiply one by the other with a sum of eighty four which is the sum of the entire calculation. When dividing it among the mother and maternal brothers divide the entire sum by what they are entitled to if the unborn are two females; because it is the lesser amount.

Therefore the twelve portions which the heirs are entitled to should be multiplied by the share of the mother which is one, thus she is given twelve, and it is multiplied by the share of the maternal brothers which gives them twenty four, and the remaining forty eight should be kept until birth is given to the unborn. If the unborn are two females then the remainder is for them; if it is one male then he is given fourty two of the withheld amount; because this is what his share would have been given if the total was divided by his share, and what remains of the withheld money which is six and should be divided among the mother and the maternal brothers. The mother is entitled to two which is an addition to her rights, and the brothers are entitled to four which is also a sequel to their rights. This is also true if the unborn is only one female. If they are one male and one female then the same

calculation also applies, the forty two is divided into three portions; the male is entitled to two portions which is twenty eight and the femal is entitled to one portion which is fourteen, if they are two males then this same calculation also applies, the forty two are divided among them equally, therefore each of them are entitled to half which is twenty one. If the fetus dies before birth, then all the withheld shares should be returned to the mother and maternal brothers. The mother is entitled to sixteen which is added to that which she was already entitled to which was twelve, and therefore the mothers overall share is twenty eight. The maternal brothers are entitled to thirty two which is added to their initial sum which was twenty four and therefore their overall share is fifty six between them, giving each of the brothers twenty eight. In this example the shares are clarified In sha'a-Allah (if Allah wills).

88- Chapter on the rulings of a missing person

As for a missing person who has not been heard of, and therefore his life or death is uncertain due to being held captive, or being on a journey etc., two cases apply: A case where they are most likely to be alive, such as those who travel for trade, or tourism or education or the like, in this case the person should be considered for a period of ninety years, starting at birth. The other case where the person is most likely to be dead, for example; if they were on a ship which sunk and some survived, or disappeared among his family, or the like. In this case they are given a four year period which begins at the time of disappearance. After these periods have expired, then the wealth of this person should be divided among the living heirs alive after the mentioned periods have expired. Those who die within the period are not included in the division. Any of the heirs who die within this waiting period should be given the lesser amount, and the rest of it should be kept until the matter of the missing person becomes clear, or until the waiting period expires.

If it is proven that the person is alive then their share should be repaid to them, and any money which they is owed should be returned, likewise if the period expires and nothing is known of the person. If the person's death is proven before their heirs then whoever was prevented from inheriting should be given their share.

If a person has died and one of the heirs are missing, then two calculations are required to be made. One, which is considering the person is alive, and the other is considering them dead. The two calculations should be considered based on four, that which is obtained after the calculations is the total of both sums. Therefore, if a persons inheritance with or without the missing person is the same, then they should inherit the complete amount. If however the inherited amount is different if the missing person is part of the calculation, then they should inherit the smaller amount; because it is certain, and whoever does not qualify for inheritance in one of the cases then they should not receive anything. In the case of a husband and a sister with a missing paternal aunt, the calculation is from two. The husband is entitled to a half which is one, and the sisters are entitled to a half which is one, and in the case of her being alive then the sum is from six to seven. The husband is entitled to a half which is three, and the sister is entitled to a half which is also three, and the paternal aunt is entitled to a sixth which completes the two thirds.

Between the two situations there is a calculation; the two sums are multiplied by one another in order to reach fourteen which is the total. Therefore, the husband in the case of her being alive is entitled to three which is multiplied by the two if she is deceased. He is entitled to six, and the sister is the same; which is the lesser of the two amounts, and two remain for the missing person. If it is proven that she is alive then her share is paid to her, if it is proven that she is died before the death of her heirs; then the amount should be divided among the husband and sister with each receiving half. If her death is proven after the death of her heirs, or the waiting period expires and still nothing is known about her, then her share is divided among the heirs in the same way that the rest of her wealth is divided.

In the case of a husband and two paternal sisters with a missing paternal brother,

the matter of death is from six, and can be seven. The husband is entitled to three, and the two sisters are entitled to four. The calculation of him being alive is from two, and can be from eight. The husband is entitled to four, and the brother is entitled to two, and each of the sisters are entitled to one. The two sums should be multiplied by one another which equals fifty six which is the total, the husband in the case of death is entitled to three; because this is the lesser amount, which is multiplied by the case of living which is eight, therefore he is entitled to twenty four. Each of the sisters in the case of one living are entitled to one; because it is the lesser amount of their right which is multiplied by the case of death which is seven, therefore eighteen is left from this sum. If the person is proven to be alive then he should take his share of it which is fourteen and the remaining four should be given to the husband; because it is the rest of his share. Likewise, if the waiting period ends and nothing is known of the person then the total in summary is reduced to a seventh of it which is eight, and therefore everyone is entitled to a seventh of the sum. If the person's death is proven before the death of their heirs then all of it should be given to the sisters; because it is a completion of what they were entitled to, and the husband and two sisters must divide the remaining four of the missing person among themselves; because it should not be given to anyone other than them.

89- Chapter on the inheritance of the drowned and their likes

If two or more people who would inherit from one another die in a building collapse, by drowning, in a fire or in a plague and the like, then there are five scenarios:

First: one of those two who would inherit from one another dies after the other, even if it is only a moment later;

(Part No. 20; Page No. 174)

the one who dies later inherits from the one who died earlier, according to Ijma` (consensus of scholars).

Second: it is proven that they both died simultaneously, then neither of them inherits from the other, according to consensus.

Third: the case is not known: It is beyond our knowledge to determine whether they both died simultaneously or one of them preceded the other.

Fourth: it is known that some unspecified person of them preceded the other.

Fifth: it is known who died first, yet it is forgotten. In the last three cases, if the inheritors of each deceased do not claim that it is the deceased they will inherit who died later, then each of them (the deceased) will inherit from the Tilad estate (i.e. what was originally owned by the deceased during his lifetime) of the other away from what each of them inherits from the other to avoid circulation. This is according to the Madh-hab (School of Jurisprudence) of Imam Ahmad (may Allah be Merciful with him). It is the viewpoint of `Umar, `Aly and Ibn Mas`ud (may Allah be pleased with them). It is also the viewpoint adopted by Shurayh, Ibn Abu Lailah and Ibrahim Al-Nakh`y (may Allah be pleased with them). Yet Zayd ibn Thabit (may Allah be pleased with him) opined that they are not to inherit from one another. This is the Madh-hab of the three Imams (may Allah be pleased with them).

Knowing that, then the way of distribution according to the Madh-hab of Imam Ahmad (may Allah be Merciful with him) is to estimate that one or more of those who died together preceded the other(s).

(Part No. 20; Page No. 175)

Then all what (s)he originally owned during her/his lifetime (which is called Tilad estate) is to be distributed among her/his inheritors, both those alive and those who died with her/him. What is to be given to every one of those who died with him (which is called Tarif) is to be divided among the inheritors of every one respectively, after calculating the estate and then dividing it on them according to their shares. If the original denominator is divisible to them (the heads of the shares) without fractions left, their case will come to an end in the same way as the previous case: If this original denominator is not divisible to them (the heads of the shares), you should consider the relation between this original denominator and their case in the same way you consider the relation between a group of inheritors and (the number of) their shares; if the original denominator is not divisible to them (the heads of the shares), then you should write down all of them (the heads of the shares); on the other hand, if it is divisible to them through Wafq (lowest common factor), then write

down this Wafq. Then you should divide the Tarif of the third deceased, if any, among her/his live inheritors after calculating the estate and then dividing it on them according to their shares. If the original denominator is divisible to them (the heads of the shares) without fractions left, their case will come to an end in the same way as the previous case: If this original denominator is not divisible to them (the heads of the shares), you should consider the relation between this original denominator and their case in the same way you consider the relation between a group of inheritors and (the number of) their shares; if the original denominator is not divisible to them (the heads of the shares), then you should write down all of them (the heads of the shares); on the other hand, if it is divisible to them through Wafq (lowest common factor), then write down this Wafq. Then if there is a fourth deceased, you should divide his Tarif among her/his live inheritors in the same way mentioned above and so forth until the last of the deceased. Then after that you should consider the relation between the Mubayanah (i.e. there are no previous ratios among the numbers) or Wafq of every case according to the four proportions: a) Mumathalah (the shares of two or more groups are indivisible, but the numbers are equal to each other); b) Mudakhalah (some of the numbers are powers of the rest, in this case the greater number is to be the multiplier to multiply the denominator); c) Wafq (there is a lowest common factor which divides the numbers, then the Wafq of one will be multiplied with the next, then the Wafq of the product will be multiplied by the third, then the same process will work in the fourth and at the end the last product will be finally multiplied by the denominator); and d) Mubayanah (there are no previous ratios among the numbers. Then the resulting product after consideration and carrying out (mathematical operations) is to be called "part of a share" that is to multiply the case of the first deceased. The resulting product will fix the problem of the first deceased as well as the problems of the live inheritors of those who died with him with their Tashih properly. An inheritor who has a right in the first case will have it multiplied by the "part of the share," whereas an inheritor who has a right in the other cases will have it multiplied by the shares of the deceased from whom he will inherit or their Wafq.

Then you should proceed to the second deceased and assume that he died before the rest of the deceased. Here you will handle both her/his Tilad and the Tarif of those who died with her/him in the same way as you did with the first deceased. You should apply the same ruling if there exists some third deceased or more. If it happens that some woman died together with her son but the case was unknown; it is just known that one of them preceded the other without being able to determine the preceding person; or the preceding person was known but now it is forgotten; if the woman has left behind both her father and mother and the son has left a daughter, then the problem of the woman will be set up on six parts: each of her parents will have one-sixth, and the other remaining four parts are for the son. The problem of the live inheritors of the son will be set up on six parts: The maternal grandmother will have one-sixth (one part); the daughter will have one-half (i.e. three parts); and the other remaining two parts will be given to the agnate heir. The relation between the problem and the shares of the son is Wafq with a half. Thus you should multiply the Wafq of the problem (i.e. three parts) which is the "part of the share" by the problem of the woman consisting of six parts. Thus the problem will be eighteen parts: The one part each of the parents of the woman has had out of her problem will be multiplied by three (i.e. the "part of the share"). Accordingly, each of them will have three parts. The share of the maternal grandmother (who is the mother in the first problem) out of the problem of the inheritors of the son is one part that is to be multiplied by the Wafq of the shares i.e., two multiplied by two. Thus all that she should have out of the two problems will be five parts. The share of the daughter of the son out of the problem of the inheritors of the son is three parts that are to be multiplied by the Wafq of the shares (i.e. two), which equals six parts.

The share of the agnate heir out of the problem has two parts that are to be multiplied by the Wafq

of the shares (i.e. two), which equals four parts. The problem of the Tilad of the son is set up of six parts: The share of his mother is one-sixth (one part); his daughter has one-half (three parts); and the remainder (which is two parts) is the share of the agnate heir. The problem of the live inheritors of the mother is set up of six parts: each of her parents has one-sixth (one part); the daughter of her son has one-half (three parts); and the remainder (which is one part) is the share of her father by virtue of consanguinity. The relation between the problem of the inheritors of the mother and its shares is Mubayanah. Thus the original denominator of the problem (which is six) is to be multiplied by the problem of the son (which is six), which equals thirty six parts: The share of the daughter of the son out of his problem is three that are to be multiplied by the "part of the share" (which is six parts). Thus her share will be eighteenth parts. The share of the agnate heir of the son out of his problem is two (parts) that are to be multiplied by the "part of the share" (which is six parts). Thus his share will be twelve parts. The share of the daughter of the son out of the problem of the inheritors of the mother (of the son) is three (parts) that are to be multiplied by the share of the mother (which is one). Thus all her share out of the two problems will be twenty one parts. The share of the father of the mother out of the problem of her inheritors is two (parts) that are to be multiplied by her share (which is one part), which equals two parts; and the share of her mother is one (part) that is to be multiplied by her share (which is one part), which equals one part. If it happens that two brothers, one of them is the freed slave of a person while the other brother is the freed slave of another person, then the property of the first brother will be inherited by the master of the second one and the property of the second brother will be inherited by the master of the first brother. Allah (Exalted be He) knows best!

91- Book of cognates' portion of inheritance

Cognates are relatives who have no prescribed share of inheritance and who are not related to father's side. They inherit when two conditions are met, i.e., the non-existence of inheritors of a prescribed share except spouses and the non-existence of relations to father's side. Both male and female cognates inherit equally by Tanzil (taking position of ascendants who have direct relation to the deceased and receiving their shares of inheritance). Categories of cognates are eleven:

First: Daughters' children and children of sons' daughters however low.

Second: Sister's children.

Third: Daughters of brothers or half paternal brothers and daughters of their sons.

Fourth: Children of half maternal brothers.

Fifth: Paternal uncle who is half maternal brother of the deceased father, grandfather, or great grandfather.

Sixth: Paternal aunts of the deceased, of their parents, of their grandfathers, or of their grandmothers.

Seventh: Female paternal cousins and daughters of their sons.

Eighth: Maternal uncles and aunts.

Ninth: Grandfathers on the side of the mother or the father who do not otherwise have any share of inheritance such as the father of the mother, the father of the paternal grandmother, etc.

Tenth: Grandmothers on the side of the mother or the father such as the mother of the father of the mother and, according to scholars who consider them cognates, the mother of the father of the grandfather, etc.

Eleventh: Whoever is an ascendant of any of the relatives of the ten categories mentioned above such as the paternal aunt of the paternal aunt of the paternal aunt, the maternal aunt of the maternal aunt, the father of maternal grandfather, brother of paternal uncle who is a half maternal brother to the father of the deceased or his paternal uncle or his paternal aunt etc. Each one of the concerned ten categories takes the position of their ascendant inheritors. Accordingly, children of daughters however low take the position of daughters, children of daughters of sons however low take the position of daughters of sons, children of sisters take the position of sisters, daughters of brothers and daughters of brothers' sons take the positions of their fathers, children of half maternal brothers or sisters take the position of half maternal brothers, Paternal uncle who is half maternal brother of the deceased father and paternal aunts take the position of the father, maternal uncles and aunts take the position of the mother, maternal uncles and aunts of the father take the position of paternal grandmother, maternal uncles and aunts of the mother take the position of maternal grandmother, maternal grandfather and all his descendants take the position of the mother, father of paternal grandmother and all his descendants take the position of paternal grandmother and so on. The share

of each inheritor is thus to go to their descendants. If only one cognate is there, they are to receive all the property of the deceased.

However, if a group of people of the same rank are descendants of the same inheritor such as their children; they are to receive their father's share of inheritance in equal portions for both males and females. Consequently, each one of three sons of a daughter receive one third of the property while each one of three sons and one daughter of a sister receive one forth of the property.

(Part No. 20; Page No. 185)

However, if the concerned group of people is of different levels of relations to their ascendants; the share of the latter is to be distributed amongst their descendants according to their due shares of the inheritance of their ascendants. Three separate maternal aunts will thus have five shares; three shares for the full maternal aunt, one share for the maternal aunt who is a half paternal sister to the mother of the deceased, and one share for the maternal aunt who is a half maternal sister to the mother of the deceased for these are their shares of inheritance of the property of their ascendant i.e., the mother of the deceased. Likewise, three separate paternal aunts will have five shares ; three shares for the full paternal aunt, one share for the paternal aunt who is a half paternal sister to the father of the deceased, and one share for the paternal aunt who is a half maternal sister to the father of the deceased for these are their shares of inheritance of the property of the father of the deceased. Besides, three separate maternal uncles will have six shares; one sixth for the maternal uncle who is a half maternal brother to the mother of the deceased and the remaining for the full maternal uncle who is excluded from inheritance by the maternal uncle who is a half paternal brother to the mother of the deceased. Maternal grandfather excludes maternal uncles and aunts from inheritance for he is to do the same with regard to the inheritance of the concerned ascendant mother.

In addition, if a group of people descend from another, inheritance is to be divided amongst the descendants so that each one of them receives the share of their ascendant either the prescribed one or that is deserved because of their relation to the father's side. If some of the ascendants in question are excluded from inheritance because of some others, their concerned descendants are to be excluded as well. Three separate daughters have thus five shares; three for three for the daughter of the full sister, one for the daughter of the half paternal sister of the deceased, and one for the daughter of the half maternal sister of the deceased. One daughter of a daughter and one daughter of a daughter of a son will have four shares; three for the daughter of the daughter and one for the daughter of the daughter of the son. Three daughters of a full brother, one daughter of a half paternal brother, and one daughter of a half maternal brother will have six shares; one for the daughter of the half maternal brother which is the portion of her father, the remaining for the daughters of the full brother, and the daughter of the half paternal brother will be excluded from inheritance

(Part No. 20; Page No. 186)

because daughters of the full brother take his position and the daughter of the half paternal brother takes his position and it is renowned that a full brother excludes a half paternal brother from inheritance. As the shares of the daughters of the full brother can not be divided amongst then (for they are three and they have five shares), we are to multiply their number i.e., 3 by the total number of shares i.e., 6. We thus get 18 shares so we multiply the original share of the daughter of the half maternal brother i.e., 1 by 3 thus she gets 3 shares. We then multiply the original share of the daughters of the full brother i.e., 5 by 3 thus we get 15 shares; 5 for each daughter.

Far relatives of ascendants are excluded from inheritance by near ones as long as all are of one position. A daughter of a daughter of a son thus excludes a son of a daughter of a daughter. Likewise, a daughter of a son of a full brother or half paternal brother excludes a son of a daughter

of a brother. However, if position differs; each cognate - regardless of how far they are to the deceased - takes the position of their ascendant inheritor whether they are excluded by a closer inheritor or not. Accordingly, a daughter of a daughter of a daughter excludes daughter of a half maternal brother because the former takes the position of her grandmother and the latter takes the position of her father and daughters exclude half maternal brothers. To give another example, a son of a daughter of a daughter of a daughter and a daughter of a son of a full brother or of a half paternal brother will have two shares; the son of a daughter of a daughter of a daughter will get one share which is the share of the his great maternal grandmother as he will take her position and the daughter of the son of the full brother or of the half paternal brother will get one share i.e., that of her father's portion as she takes his position.

Bases of cognates are three: **First:** Fathership that includes grandfathers and grandmothers on the side of the father who do not otherwise have any share of inheritance

such as the father of the paternal grandmother, paternal grandmother of paternal grandmother, and maternal grandmother of grandfather if we hold the view that she does not have a share of inheritance in the presence of one or more relatives who have prescribed shares of inheritance or who relate purely to father's side, paternal uncle who is a half maternal brother to the deceased, paternal aunts, father's maternal uncles and aunts, daughters of brothers, daughters of sons of brothers, children of sisters, female paternal cousins, and daughters of sons of female paternal cousins.

Second: Motherhood that includes grandfathers and grandmothers to the side of the mother who do not otherwise have any share of inheritance such as maternal grandfather, mother of maternal grandfather, father of maternal grandmother, paternal grandmother of maternal grandmother, mother's paternal uncles, mother's paternal aunts, paternal aunts of maternal grandfather, maternal grandmother, paternal uncles of maternal grandmother, maternal uncles of a mother, maternal aunts of a mother, maternal uncles of maternal grandfather, maternal uncles of maternal grandmother, maternal aunts of maternal grandfather, and maternal aunts of maternal grandmother.

Third: Sonship that includes children of daughters and children of daughters of sons however low. If a person dies and leaves a son of a daughter of a daughter, a daughter of a full brother or of a half paternal brother, and a maternal uncle; they will have six shares. The son of the daughter of the daughter will get three shares which is the portion of his grandmother, the maternal uncle will get one share which is the portion of his sister i.e., the mother, and the daughter of the concerned brother will get the remaining two shares which is the portion of her father. To give other examples, the daughter of the daughter of a full sister and the maternal aunt will have five shares three for the former and two for the latter while in the case of a daughter of a brother and a paternal uncle who is a half maternal brother to the deceased or a paternal aunt, all the property will be inherited by the concerned paternal uncle or aunt because each one of them takes the position of the father who excludes the brother. In addition, in the case of a son of a daughter of a daughter of a daughter and a daughter of half maternal brother, all the property of inheritance goes to the son of a daughter of a daughter of a daughter as he takes the position of his great grandmother i.e., the first daughter while the daughter of the half maternal brother takes the position of her father

the daughter excludes the maternal half brother.

Whoever cognate has two ascendant relatives who have direct relation to the deceased is to inherit by taking both of their positions. A daughter of a half maternal brother who is at the same time a male paternal cousin and a daughter of a male paternal cousin will thus have six shares. The

daughter of the half maternal brother will get one share i.e., the portion of her father while the remaining five shares will be for her and the daughter of the male paternal cousin. Since five shares can not be divided amongst them, we multiply 2 i.e., the number of inheritors by 6 i.e., the original number of total shares so shares will be twelve. The daughter of the half maternal brother will get 2 shares (after multiplying her original one sixth (share) by 2) then she and the daughter of the male paternal cousin will get 5 shares each (after multiplying the original remaining five shares by 2 and dividing the ten shares amongst them). To give another example, a son of a daughter of a daughter who is at the same time a son of a son of another daughter and a daughter of a daughter of another daughter will have three shares; two for the son of the daughter of the daughter which are the portions of his maternal and paternal grandmothers and one for the daughter of the daughter of the other daughter which is the portion of her grandmother.

In the case of the existence of a spouse with the cognates, the concerned spouse is to be given their full prescribed share of inheritance with no exclusion (from inheritance) or `Awl (increase in the number of shares of inheritance and a decrease in their amounts). The remainder is then to be given to the cognate or divided amongst them if they are more than one person.

A wife and three sons of a daughter or of a sister will have four shares; one for the wife i.e., one forth and the remaining shares will be divided equally amongst the sons of the daughter or sister i.e., one for each.

If, after giving the existent spouse their due share, the remaining shares can not be divided amongst the cognates; make for them a separate case and divide the integer number you reach amongst them. Then compare between the shares the cognates get in the separate case and the remaining shares after giving the existent spouse their share. If the remaining shares after giving the existent spouse their prescribed share and the shares of the cognates in the other separate case can be divided by one same integer, the result of such division of the shares in the case of the cognates is to be multiplied by the shares of the case of the existent spouse but if the concerned shares can not be divided by one same integer, multiply all the shares of the first case by all the shares of the second case and you will reach an integer number based on which all shares of the two cases can be divided.

An example of a case in which the remaining shares after giving the existent spouse their prescribed share and the shares of the cognates in the other separate case can be divided by one same integer is when a man dies leaving a wife, a daughter of a full sister, a daughter of half paternal sister, and two daughters of two half maternal sisters. Shares of the case in which a wife is existent are four; the wife will get one share i.e., one forth and the cognates will get the remaining shares. On the other hand, shares of the separate case of the cognates are six; the daughter of the full sister will get three shares, the daughter of the half paternal sister will get one share, and the two daughters of the two half maternal sisters will get two shares. Since the remaining shares after giving the existent wife her prescribed share and the shares of the cognates in the other separate case can be divided by one same integer i.e. 3, the result of such division of the shares of the case of the cognates i.e., 2 is to be multiplied by the shares of the case of the existent wife i.e., 4 to give 8. The one share of the wife will thus be multiplied by the result of the division of the shares of the case of the cognates mentioned above i.e., 2 so she will get two shares. The three shares of the daughter of the full sister are to be multiplied by the result of the concerned division of the shares of the case in which the wife is existent after giving the wife her prescribed share i.e., 1 so she will get three shares. The one share of the daughter of the half paternal sister are to be multiplied by the result of the concerned division of the shares of the case in which the wife is existent after giving the wife her prescribed share i.e., 1 so she will get one share and the same will be done with regard to the two shares of the two daughters of the two half maternal sisters

so they will get two shares.

An example of a case in which the remaining shares after giving the existent spouse their prescribed share and the shares of the cognates in the other separate case can not be divided by one same integer is when a woman dies and leaves a husband, a daughter of a full sister, a daughter of a half paternal sister, and a daughter of a half maternal sister. Shares of the case in which a husband is existent are two; the husband will get one i.e., a half and the cognates will get the remaining one share. On the other hand, shares of the separate case of the cognates are five; the daughter of the full sister will get three shares, the daughter of the half paternal sister will get one share, and the daughter of the half maternal sister will get one share. Since the remaining shares after giving the existent husband his prescribed share and the shares of the cognates in the other separate case can not be divided by one same integer, all the shares of the first case are to be multiplied by all the shares of the second case i.e., 2 by 5 and this will give ten. The one share of the husband will be multiplied by the five shares of the separate case of the cognates thus he will receive five shares. The three shares of the daughter of the full sister will be multiplied by one which is the remaining share after giving the husband his prescribed share (in the case where the husband is existent) thus she will get three shares. Finally, the one share of the daughter of the half paternal sister and that of the daughter of the half maternal sister will be multiplied by one which is the remaining share after giving the husband his prescribed share (in the case where the husband is existent) thus each one of them will get one share.

`Awl is not applied with regard to all shares of inheritance of cognates except six for it increases to seven. An example of this is when a person dies leaving a maternal uncle, two daughters of two full sisters or of two half paternal sisters, and two daughters of two half maternal sisters. Shares of this case are six but they increase to be seven; the maternal uncle will get one share, two daughters of two full sisters or of two half paternal sisters will get four shares, and the two daughters of the two maternal sisters will get two shares. Another example is when a person dies leaving a maternal grandfather, a daughter of a full sister, a daughter of a half paternal sister, and two sons of two half maternal brothers. Shares of this case are six but they increase to become seven; the maternal grandfather will get one share, the daughter of the full sister will get three shares, the daughter of the half paternal sister will get one share, and the two sons of the of the two half maternal brothers

will get two shares, one each.

This is all that I could compile and Allah knows best. May peace and blessings be upon our Prophet Muhammad, his family, and Companions!

(Part No. 20; Page No. 192)

(Part No. 20; Page No. 193)

Chapter on the Exclusion from Inheritance

(Part No. 20; Page No. 194)

(Part No. 20; Page No. 195)

A father excludes the brethren from inheritance

Q 92: My ten year old son passed away in a car accident and we have received Diyah (blood money); does his father have the right to dispose in the shares of the two brethren or should he deposit the money in their bank account until they grow up? It is worth mentioning that we decided to spend the Diyah in charitable acts on behalf of the deceased. The father fears that the two brothers would change this agreement and spend the money for another purpose.

A: The Diyah (blood money) is between you and his father. You shall have one-sixth and the rest shall be for his father. As for the brothers, they have nothing of the Diyah according to the consensus of Muslim scholars because the father excludes them from inheritance. Allah is the Grantor of success!

The Sister excludes the sons of a brother from inheritance

Q93 : A woman asks saying: My mother died leaving me, her full sister, three sons and a daughter of the full brother of my mother.

(Part No. 20; Page No. 196)

What is the ruling on this?

A: If the case is as you have mentioned, then the estate your mother (may Allah be merciful with her) left is to be halved between you and your sister. The sons of her brother have nothing because her sister in this case excludes the sons of the brother from inheritance. If your mother left a will, then her will has priority over the right of you and her sister if it is on one-third or less (of the estate) in the way prescribed in the Shari`ah (Islamic law). If it is proven that she owes a debt, then begin with paying off her debt before putting the will into action and before distributing the estate between you and her sister.

(Part No. 20; Page No. 197)

The full or paternal Sister excludes the sons of brothers from Inheritance

His Eminence Shaykh `Abdul-`Aziz bin `Abdullah ibn Baz, the Grand Mufty of the Kingdom of Saudi Arabia, may Allah safeguard you!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

May Allah reward you with what is best for the efforts you exert for Islam and Muslims! Please, give us a Fatwa on how to distribute the following estate:

A man died leaving a daughter, a full sister, a wife, children of a full brother and children of paternal brothers May Allah reward you with what is best and grant you permanent success! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

A: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!):

If the case is as you have mentioned, the estate should be divided into eight equal shares: One eighth share is for the wife. The daughter has half the estate, i.e., four shares. The rest is for the full sister. The children of the brothers have nothing because the full sister, in this case and similar cases, deprives the sons

(Part No. 20; Page No. 198)

of the full or paternal brothers. In such a case, the paternal sister also deprives the children of brothers because it was authentically reported that the Prophet (may peace be upon him) said what proves this, which is excluded from his saying (peace be upon him): (Give the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased.) (Agreed upon by Al-Bukhari and Muslim) As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

Grand Mufty of the Kingdom of Saudi Arabia

`Abdul-`Aziz ibn `Abdullah ibn Baz

Full brothers deprive paternal brothers

His Eminence Shaykh `Abdul-`Aziz ibn Baz, may Allah safeguard you!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

I write seeking your Fatwa regarding the following request:

A man died leaving a wife, a full brother, a paternal brother, a full sister and a paternal sister. The estate was given to the full brother and the full sister, whereas neither the paternal brother nor the paternal sister was given out of it. What is the Fatwa of Your Eminence regarding this? May Allah reward you with what is best!

May Allah guide you to what is of benefit for His Purified Shar`! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

A: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

If the case is as you have mentioned in the question, i.e., the deceased left a wife, a full brother and a full sister, and a paternal brother

and a paternal sister, then the estate is to be divided among the wife and the full brother and the full sister if they embrace the same religion, i.e., Islam, or other religion than Islam. As for the paternal brother and the paternal sister, they have no share in the estate because it is unanimously agreed that the full brother and full sister deprive them because the latter are closer in relationship than the first. The wife is to be given just one fourth of the estate, i.e., one out of four equal shares. The rest (the three shares) are two be distributed between the full brother and the full sister: The first has two shares while the second has one because Allah (Glorified and Exalted be He) says: ﴾if there are brothers and sisters, the male will have twice the share of the female.﴿ This verse is cited from the end of Surah Al-Nisa'.May Allah grant us all success! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

General Chairman of the Departments of Scholarly Research,

Ifta', Daw`ah, and Guidance

A full Brother deprives paternal brothers

From `Abdul-`Aziz ibn Baz to the honorable Muslim sister, may Allah guide her to what pleases Him! Amen!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

I have received your letter dated 23/2/1415 A.H., may Allah guide you! It included an explanation of the heirs of a daughter as well as your desire to know their shares, which was known to us. Her heirs are her mother, her full brother, her full sister and her two maternal brothers.

A: The estate is to be divided into six equal shares: One share (one sixth) for her mother; two shares (one third) for her maternal brothers, i.e., one share for each of them; and the three remaining shares (i.e., half of the estate) are to be distributed between her full brother and full sister, where the share of a man is twice the share of a woman. Please inform my greetings to the sister, the uncle, and all the family members. As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

Grand Mufty of the Kingdom of Saudi Arabia,

Chairman of the Council of Senior Scholars

and the Departments of Scholarly Research and Ifta'

The Grandchildren of one's son deprive one's brothers and sisters

A brother came to me and mentioned that his grandmother died leaving three daughters and seven grandchildren from her son (three males and four females), a full sister, a maternal brother and her husband. This is what he mentioned and he asked me to explain to him how the estate is to be distributed.

A: If the case is as the questioner has mentioned, then the estate of his deceased grandmother should be distributed into twelve equal shares: The husband is to have one fourth of the estate (i.e., three shares), her daughters are to have eight shares (two thirds), and the remaining share is to be given to her grandchildren from her son, where the share of a male is twice the share of a female. As for her brother and sister, they have no shares because the children of her son deprive her brothers and sisters with the Ijma' (consensus) of Muslim scholars. This is stated by the one who seeks Allah's Forgiveness `Abdul-`Aziz bin `Abdullah ibn Baz, may Allah forgive him! Allah's Peace and blessings be upon His Prophet Muhammad, his family and Companions.

`Abdul- `Aziz ibn `Abdullah ibn Baz

Maternal brothers and sisters inherit in the presence of the mother and the full brothers

Q 98: A woman was married to two men, one after the other, and they both died. She had begotten to the first a son and four daughters and begotten to the second two sons and a daughter. One of her sons from the second husband died and left an estate. Do her children from the first husband have the right to inherit their deceased maternal brother, taking into consideration that the mother is still alive? How much is the share of the son from the first husband and his four sisters and how much is the share of the full brothers and sisters of their deceased brother? The estate is only two hundred and fifty thousand Riyals.

A: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

If the case is as you have mentioned in the question, then the estate of the deceased son should be divided into six equal shares: One share (i.e., one sixth) for the mother; two shares for his maternal brothers and sisters to be distributed equally among the five of them; and the three shares remaining are for his full brother and full sister, where the share of a male is twice the share of a female. In other words, the male should have twice the share of a female. May Allah grant us all success! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

General Mufty of the Kingdom

`Abdul- `Aziz ibn `Abdullah ibn Baz

One's Grandchildren from their sons cannot inherit in the presence of their uncles

Q 99: A man died during his father's life, leaving children and brothers. Then his father died. Is it permissible for his children to inherit their grandfather or not?

A: The children of the deceased's sons do not have the right to inherit in the presence of their uncles who are the son's of the deceased, according to the Ijma' (consensus) of the Muslim scholars because the Prophet (peace be upon him) said: ﴾Give the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased.﴿ (Agreed upon by Al-Bukhari and Muslim) Thus, the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) are to be given to: ﴾the closest male relative of the deceased.﴿ There is no doubt that the sons of the deceased are closer to him than his grandchildren from his sons. An exception is that they can inherit if their grandfather left a will bequeathing them a third or less of his fortune. There is no harm in this if the will is proven through Shar`y (legal) evidence.

The sons of the full paternal uncle deprive the sons of the paternal uncle on the father's side

Q 100: A woman died leaving male nephews of a half brother and male cousins; who deserves to inherit and who does not deserve inheritance? What is the share of each of them?

A: If her existing male nephews are the sons of a paternal brother, then they are the agnates, whereas her male cousins do not have any shares. Yet if the nephews are the sons of a maternal brother, then they have no share because they are blood relatives, and the agnates are her male cousins if they are the sons of a full paternal uncle or the sons of a paternal uncle on the side of the father. If she has sons of a full paternal uncle and sons of a paternal uncle on the side of the father, then the agnates are the sons of the full paternal uncle if they are of the same degree (of relationship). If some of them are closer than the other, then the agnates are those closer and the distant ones have nothing, for both the sons of the full paternal uncle and the sons of the paternal uncle on the side of the father because the Prophet (peace be upon him) said: ﴾Whatever property a son or a father receives as an heir will go to his agnates, whoever they may be.﴿ And: ﴾Give the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased.﴿

(Agreed upon by Al-Bukhari and Muslim). Allah is the Grantor of success!

The daughters of a full brother do not inherit their deceased uncle with the presence of males

Q 101: A man died without leaving behind him neither a wife nor children but he has children of a full brother who died before him. Do the male and female children of the brother inherit their deceased uncle?

A: If the case is as the questioner has mentioned, then the whole estate is to be given to the sons of the full brother, whereas the daughters (of this full brother) receive nothing according to the Ijma' (consensus) of Muslim scholars because the Prophet (peace be upon him) said: (Give the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased.) (Agreed upon by Al-Bukhari and Muslim). This is because the daughters of one's brother are not out of As-hab-ul-Furud (heirs of prescribed shares of inheritance) nor out of the agnates. Rather, they are out of Dhu Al-Arham (heirs connected through the female blood relatives) with the Ijma' (consensus) of Muslim scholars.

Chapter on Agnates

If the prescribed shares have consumed the whole estate, then the agnate relatives have no share

Q 102: How should the inheritance of a woman who died leaving a husband, two daughters, a mother, and two brothers be distributed?

A: The estate is to be divided into (13) shares because there is `Awl (increase in the number of shares of inheritance and a decrease in their amounts): Three shares for the husband; eight for the two daughters; and two for the mother.

As for the two brothers, they have nothing because they are entitled to inherit by agnation and there is nothing left for them as the shares have consumed the whole estate. The Prophet (peace be upon him) said: (Give the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased.) (Agreed upon by Al-Bukhari and Muslim) In this case, there is nothing left for the nearest agnate. May Allah's Peace and Blessings be upon Prophet Muhammad, his family and Companions!

General Chairman

`Abdul-`Aziz ibn `Abdullah ibn Baz

Sisters (of the deceased) are deemed to be gnates with the Presence of daughters

Q 103: The son of my paternal uncle died leaving a wife, five daughters and three sisters. He left a lot of land as a bequest. How should the inheritance be distributed, knowing that we are the sons of his full paternal uncle and that he has other paternal cousins from the side of the father? Are we entitled to take from the inheritance?

A: The estate is to be divided into twenty four shares: The wife has one eighth (three shares), the daughters have two thirds (sixteen shares) to be distributed equally among them, and the remaining five shares are to be given to the sisters if they are full or paternal half sisters who are considered in this case as agnates because with the presence of daughters, the sisters are deemed to be agnates if they are full or paternal half sisters. If some of the sisters are full sisters and some others are paternal half sisters, then the agnation stated is to be proven for the full sisters whereas that of the paternal half sisters is to be nullified because the relationship of the first is stronger than that of the latter because they are related to the deceased through both the father and mother. Similarly, the agnation of the paternal half brother is to be nullified with the presence of the full brother. If the sisters are related to the deceased through his mother only, then their agnation is to be nullified with the presence of the daughters. With the presence of the daughters, the maternal half sisters have no right to inheritance in all cases because in order for the maternal half sisters to inherit, it is conditioned that for maternal siblings to inherit there should be no descendant inheritors or

any male inheritors. If all the sisters are maternal half sisters, then the rest of this estate is to be given to the sons of the full paternal uncle (of the deceased) if they are of the same level (of relationship). If some of them are closer (to the deceased) than others, then the agnation is to be proven for the closest. Regarding the sons of the paternal uncle from the side of the father, their agnation is to be nullified with the presence of the sons of the full paternal uncle because the latter are closer to the deceased and their relationship to him is stronger. The Prophet (peace be upon him) said: (Give the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased.) (Agreed upon by Al-Bukhari and Muslim) It is authentically reported that the Prophet (peace be upon him) distributed the estate whose heirs were a daughter, a son's daughter, and a full sister as follows: (One half for the daughter and one sixth for the son's daughter as both shares make two thirds of the total property, and the rest was for the sister.) (Related by Al-Bukhari in his Sahih). Allah is the Grantor of success!

(Part No. 20; Page No. 210)

(Part No. 20; Page No. 211)

Chapter on Distributing the Estates

(Part No. 20; Page No. 212)

(Part No. 20; Page No. 213)

The rights that should be taken from the estate and the cost of the preparation of the deceased

Q 104: Is the cost of the perfume and shroud the first thing to be taken from the property of the deceased?

A: The first thing to be taken from the property of the deceased is the cost of its preparation, such as the cost of the shroud, the wage of the person who washed it and the person who dug the grave, etc. Next are the debts including mortgage. Then the unrestricted debts including the mortgage-free ones. Then the will bequeathing the third or less for anyone other than heirs. And finally the heirs.

105. The property of the deceased belongs to their heirs and is not to be spent on charitable projects

From `Abdul- Aziz ibn `Abdullah ibn Baz to our respect-worthy brother the inquirer, may Allah guide him to that which pleases Him! Amen!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

I have received your question from Al-Jazeera Newspaper. The question runs as follows:

Your brother died and left behind sums of money with some people. Those sums were collected and you have them now. You want to spend them on charitable projects, knowing that you have performed Hajj (Pilgrimage) on his behalf with your own money, and so on and so forth. .

A: The Hajj (Pilgrimage) you performed with your own money is sufficient as it discharges your deceased brother from the obligation. May Allah reward you with the best and multiply your reward for this act!

With regards to the sums of money referred to in the question, they must be divided among the heirs. Besides, the ambiguous parts in this regard, in the will or in any other thing, you should refer it to the court as its decision will- in sha'a-Allah (if Allah wills)- be sufficient. May Allah guide

us all to that which pleases Him!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

General Mufty of the Kingdom of Saudi Arabia,

Chairman of the Council of Senior Scholars

and of the Department of Scholarly Research and Ifta'.

(Part No. 20; Page No. 216)

106. It is not permissible to dispose of the money of the deceased without the permission of the heirs

To His Eminence Shaykh `Abdul-`Aziz ibn `Abdullah ibn Baz, may Allah safeguard you!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

My father is indebted to the Credit Bank (Real Estate Fund) for a sum of seventy-nine thousand Riyals, and he had entrusted me with the management of all his properties before his lapsing into a state of mental deficiency due to senility. So, do I- being his eldest daughter- have the right to settle his debts through the money with which he had entrusted me, without informing the rest of his children, knowing that they may prevent my disposal of the money on the pretext of deferring settlement of debts until his death to facilitate remission? Here, it is worth noting that originally remission does not lie within the authority of the bank, but rather falls under the jurisdiction of the (governmental) Department. Besides, the Department sets certain conditions for remission, which- I deem- do not apply to my family. Hence, I am afraid that my father's indebtedness continues for a long period or that- in case he dies- he be prevented being admitted into Paradise until his debts are cleared.

I thus hope to get a legal Fatwa and advice from you on whether I should dispose of his money to clear his debts or abstain from doing so on the grounds that Allah (Exalted be He) will forgive him since he has got children who are capable of clearing his debts. May Allah reward you with the best!

(Part No. 20; Page No. 217)

A: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) You are in no way entitled to dispose of any of his money except after referring to the court. May Allah grant success to all Muslims!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

General Mufty of the Kingdom of Saudi Arabia

`Abdul-`Aziz ibn `Abdullah ibn Baz

Turning ill-gotten money back to the heirs of the deceased owner

Q 107: I am a man who has acquired money through illegal means. Yet, since I have repented to Allah, what should I do with my ill-gotten money, especially that it is impossible to return it to its owners, as they are dead? Besides, how can I give it out in charity if the one to whom the money will be given knows that this money is unlawful? May Allah reward you with the best! .

A: It is incumbent upon you to return the money back to the heirs of the deceased owner if he had heirs. However, if he happened to have no heirs or had heirs who are unknown to you, you should give out the money to the poor among the kinfolks of the deceased owner without telling them about the source of the money. In this way, you will join repentance with freedom from liability. All Praise be to Allah!

108. The Diyah (blood money) of a murdered person is integrated into his inheritance

His Eminence Shaykh `Abdul-`Aziz ibn `Abdullah ibn Baz, **General Mufty of the Kingdom of Saudi Arabia, may Allah guide you to that which pleases Him, Amen!**

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

I hope that you would kindly reply to the following question:

A man was killed through involuntary manslaughter and thus a Diyah (blood money) was due on his killer. Could this Diyah (blood money) be considered as a part of the murdered person's inheritance in a way that allows adding it to his inheritance, settling his debt with it, and applying his will to it; or is it only the due right of the heirs and is thus not a part of the inheritance? May Allah reward you with the best! .

A: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

This Diyah (blood money) is considered a part of the inheritance, which is permissible to be used in settling the murdered person's debts which are either due to Allah or to people. It could also be used in fulfilling his will within the limits of the one third or less than it, and this applies to the Diyah of premeditated murder too. The remaining sum, however, becomes the right of the heirs, and - as far as I know - this is an uncontroversial view among religious scholars. May Allah grant us success! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

General Mufty of the Kingdom of Saudi Arabia

`Abdul-`Aziz ibn `Abdullah ibn Baz

Q 109. Is the Diyah to be distributed among his heirs ? .

A: The Diyah (blood money) is like inheritance; meaning that it should be distributed among all the heirs, unless any of them is a murderer (of the testator), since - in this case - he will be excluded from inheritance. However, the inheritance should be distributed among the heirs whom the killer is not one of them, as the Diyah is distributed just like inheritance.

110. It is impermissible to deprive women of their inheritance by trickery

From `Abdul-`Aziz ibn `Abdullah ibn Baz to the revered fellow brother the questioner, may Allah guide him to that which pleases Him, Amen!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

I have received your letter dated 29 Muharram, 1416 A.H. - may Allah direct you to His Guidance - which included an enquiry about the trickery employed by some people to exclude women from inheritance. .

A: It is impermissible for anyone to deprive a woman of her right to inheritance or to practice trickery to achieve this goal, since Allah (may He be Praised) has ordained her right to inheritance in His Glorious Book (the Qur`an) and in the Sunnah of His Trustworthy Prophet (peace be upon him). Besides, all Muslim scholars agree to that right. Allah (Exalted be He) says: ﴾Allâh commands you as regards your children's (inheritance): to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth.﴿

The cited verse is from Surah Al-Nisa'. Again, Allah (Exalted be He) says at the end of the same Surah: ﴾They ask you for a legal verdict. Say: "Allâh directs (thus) about Al-Kalâlah (those who leave neither descendants nor ascendants as heirs). If it is a man that dies leaving a sister, but no child, she shall have half the inheritance. If (such a deceased was) a woman, who left no child, her brother takes her inheritance. If there are two sisters, they shall have two-thirds of the inheritance; if there are brothers and sisters, the male will have twice the share of the female. (Thus) does Allâh make clear to you (His Law) lest you go astray. And Allâh is the All-Knower of everything."﴿ Therefore, it is obligatory upon all Muslims to act upon Allah's Shar` (Law) with regards to inheritance and any other matters, and to guard against all that contradicts it. They should also disapprove of all those who deny Allah's Law or practice trickery in order to contradict it with regards to depriving women from their right to inherit or any other matter which contradicts the Purified Shari`ah (Islamic law). Moreover, those who deprive women from their right to inherit or practice trickery to achieve this goal, besides contradicting the Shari`ah (Islamic law) and the Ijma` (consensus) of Muslim scholars, are following the practices of Jahiliyyah (pre-Islamic time of ignorance) that had been assumed by disbelievers, of excluding women from inheritance. Thus, we ask Allah to safeguard us, them and all Muslims against anything that contradicts His Shar` (Law)! Moreover, it is obligatory on you as well as on other Muslims to refer the issue to the rulers about those who call for depriving women from their right to inherit or for contriving to deprive them from it, so that the rulers would discipline them through due punishment by way of legal courts. May Allah guide us and you and all Muslims

to that which pleases Him! May He also mend the conditions of all Muslims and guide them to that which involves their salvation and happiness! We also ask Him (Exalted be He) to guide our rulers to every good and maintain what is right at their hand, as He is indeed Most Bountiful and Most Generous! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

General Mufty of the Kingdom of Saudi Arabia,

Chairman of Council of Senior Scholars

and of the Department of Scholarly Research and Ifta'

Distributing Inheritance after Settling Debts

Q 111: A man died while being indebted, and had no property other than a house and a farm. He also left poor children who dwell in that house and live on the produce of the farm. Should those children sell the house and the farm in order to settle the debt of their father, knowing that they are poor? Besides, is there a difference between the debt due to people and those due to the government?

A: The debt of the deceased should be settled from his inheritance, whether it is due to the government or to individuals, ob the basis of the Hadith which reads: "The soul of the (deceased) believer is suspended (from entering into Paradise) due to his debt until it (that debt) is settled". In addition, it is impermissible for his children or anyone else of the heirs to make use of his property to the neglect of settling his debt, since inheritance becomes due only after settling debts. For Allah (Glorified and Exalted be He) says about inheritance:

﴾after payment of legacies he (or she) may have bequeathed or debts﴿ On the other hand, ﴾The Prophet (peace be upon him) gave a verdict that the debt should be repaid before carrying out the will.﴿ Therefore, the first thing that should be done regarding inheritance is settlement of debts and then comes fulfillment of the legal will, followed by (distribution of) inheritance.

The religious ruling of giving Sadaqah from an inheritance without the inheritors' knowledge

Q 112: My mother died after giving me an interest-free loan (for the sake of Allah) of fourteen thousand riyals. So, I wish you could direct me on how to distribute this sum among the inheritors, knowing that my mother's inheritors are three sons (each one from a different husband), and one daughter, who had already died while being married (i.e., she was not divorced). How should I distribute the sum mentioned above among the inheritors who are - as stated above- a husband, three sons and a daughter? Besides, should I give out a part of it in charity without the consent or knowledge of the inheritors? Enlighten me on this issue, may Allah reward you with the best!

A: You must distribute the money among the inheritors, with you being one of them, as follows: The husband should receive one quarter, i.e., three thousand and five hundred riyals, while the rest of it should be distributed among the remaining inheritors- meaning the three sons

and the daughter- as follows, the daughter should receive one thousand and five hundred riyals, while every son should get three thousand riyals. Moreover, you do not have the right to give any part of the money in charity except through the consent of the inheritors, unless your mother had determined in her will that a part of her property be given out in charity. For, in this case, it is obligatory to fulfill her will if two just witnesses testify to it and it [the part assigned for charity. Ed.] is estimated to one third of her legacy. Allah is the Grantor of success!

Repaying a debt is given priority over distributing inheritance

Q 113: Is the loan of the Real Estate and Agricultural Bank considered as a debt on a person who had taken it and died before repaying it? Besides, what should the inheritors do regarding this issue- since they in fact want to relieve the dead (of the burden of the debt)- if they cannot quickly settle the loan, and what is the ruling on that?

A: The loan due to the Real Estate Bank or any other bank should, like other debts, be repaid in its due time, whether the debtor is alive or dead. Thus, if a man dies while being indebted to a bank, his debt should be settled from the inheritance in its due time if the inheritors guarantee settling it. However, if they do not keep up their pledge, the loan should immediately be repaid from the inheritance, so that the dead person would be acquitted of the consequences of indebtedness. In this context, it was reported from the Prophet (peace be upon him) that he said: (The soul of the (deceased) believer remains suspended (from entering Paradise) until his debt is settled

(Part No. 20; Page No. 227)

) However, if the debt is on credit and the inheritors, or some of them, vouch for settling it in its due time, it is then put off and does not become due. Besides, it does not harm the dead since it is put off. Yet, if none of the inheritors undertakes settling it in its due time, it should then be repaid from the inheritance, so that the dead would be absolved of the consequences of it.

The soul of the (dead) believer is suspended by his debt

Q 114: A fellow Muslim brother from Riyadh asks saying: My father (may Allah be merciful with him) took up a loan from the Real Estate Development Fund and after consulting the Fund, we found out that there are installments which are already due, seven in number, and that were not paid, and that there are still installments which have not yet matured. Thus, what should we do with regards to these due installments and those which are not yet due? Besides, is (the soul of) our father (may Allah be merciful with him) suspended by these installments, those due and others that will be due in future? We hope that you will explain the ruling of the Shari`ah (Islamic law) regarding this issue, may Allah reward you with the best! .

(Part No. 20; Page No. 228)

A: It is obligatory on the heirs to settle mature installments through the inheritance, as it is impermissible to negligently deal with this issue when one is capable of settling it. This is because the Prophet (peace be upon him) said: (The soul of a (dead) believer remains suspended by his debt, until it is repaid on his behalf.)

As for the installments which have not yet matured, it is obligatory to repay them when they are due, and there is no harm on the dead person regarding such debts. It is dealt with as if the dead person were still alive, meaning that in this case, they are not due. Allah is the Grantor of success!

A person who dies while in debt

does his soul remain hanging?

Q 115. The ruling on a person who dies while being in debt, he was unable to settle it out of his poverty, is his soul hanging? .

A: Imam Ahmad, Ibn Majah and Al-Tirmidhy reported from Abu Hurayrah

(Part No. 20; Page No. 229)

(may Allah be pleased with him) that the Prophet (peace be upon him) said: (The soul of a (dead) believer remains suspended by his debt, until it is repaid on his behalf.) This is conceived to apply to the person who dies while leaving behind money through which his debt is to be settled. However, a person who dies while being unable to repay his debts is hopefully not included in this Hadith, as Allah (Glorified and Exalted be He) says: (Allâh burdens not a person beyond his scope.) He (may He be Praised) also says: (And if the debtor is in a hard time (has no money), then grant him time till it is easy for him to repay) Likewise, the Hadith does not include the one who harbors good intention to repay his debt upon taking it up but dies before being able to repay it, since it was reported by Al-Bukhari (may Allah be merciful with him) from Abu Hurayrah (may Allah be pleased with him) that the Prophet (peace be upon him) said: (Whoever takes the money of the people with the intention of repaying it, Allah will repay it on his behalf, and whoever takes it in order to spoil it, then Allah will spoil him.) .

When does the deceased debtor become absolved of the debt?

Q 116: It is known that the Real Estate Development Fund grants long-term loans to people so that they can build houses. These loans are repaid over twenty-five years. If the debtor dies after having repaid two installments only of the loan, and their heirs repay the debt in its due time, is the deceased absolved and the Hadith that says: (The soul of a deceased Mu'min (believer) remains suspended by their debt until it is repaid on their behalf) **does not apply to them, or is the debt still suspended until all the installments are repaid? I hopefully wish Your Eminence to clarify this issue.**

A: If a person dies before repaying a debt, they are absolved from it if the heirs abide by repaying it and the creditor is satisfied with this, or if they submit a mortgage to guarantee the fulfillment of the debt. Thus, the deceased is absolved in sha'a-Allah (if Allah wills).

It is not a prerequisite to expedite the repayment of Real Estate Bank installments if the heirs or others conform to defraying them

Q 117: My father (may Allah be merciful with him) died while being indebted to the Real Estate Bank, so - in order to have him absolved of the debt - are we obliged to repay the whole debt at once or to follow the installment schedule which is ratified by the bank? .

A: It is not a prerequisite to settle the whole debt if the heirs or any other person takes it upon themselves to defray installments in their due time in a way that spares the creditor any risk, since respite [time limit in repaying installments] is the right of the dead person which is transferred to his heirs. Thus, there is no harm- in sha'a-Allah (if Allah wills)- on the dead person because the deferred debt should be repaid only in its due time, and the heirs substitute for the dead person if they or any other person takes it upon themselves to repay it in a way that does not expose the creditor to any risks, as is explained above.

Are the loans taken by the deceased from the Real Estate Bank regarded as debts that should be repaid ?

Q 118: Is the loan that had been taken by my deceased father from the Real Estate Bank considered as a debt that should be repaid?

A: Yes, you are required to repay the debt to the bank from the inheritance according to set instructions in this regard.

The permissibility of demanding due inheritance from a relative

Q 119: My mother died without having taken her legal share (of her father's estate) from her brother for fear of breaking the ties of kinship, though she had always wanted it. Thus, do we - her children - have the right to demand our maternal uncle to give us the legal share of our mother, even if things escalated to rupture the ties of kinship or taking him to court?

A: You have the right to demand the due share of your mother in inheritance from him even if by taking him to court, unless your mother had pardoned him. For, if she

(Part No. 20; Page No. 233)

had given up her share to her brother, then you will have no right to demand it from him; but if she had not ceded her right and left the issue of demanding it from and litigating him, you then have the right to demand it from and even litigate him with no restriction on you in this issue. All praise be to Allah Alone!

It is impermissible to exclusively give inheritance to a specific son

Q 120: I am a young woman who has inherited money from her father, knowing that my father had favored me with the whole inheritance to the disinheritance of my brother. He even made a will to that effect regarding the money, and forbade me to give my brother any of that money after his (the father's) death. However, following the death of my father, I- out of sympathy towards my brother- authorized him to manage the whole inheritance and the will as well, so that he would take charge of it, because he was weak and poor and had children. Yet, my brother had an accident through which he was said to have partially lost his mind, and in turn he denied that he had taken the money from me. Consequently, he neither gave me the money nor took charge of implementing my father's will. So, is there any harm on me in contradicting the will of my father by giving the whole inheritance to my brother in order to dispose of it in spite of my father's rejection of it? May Allah reward you with the best!

(Part No. 20; Page No. 234)

A: It is not permissible for a Muslim to single out some of his heirs with anything more than his due right (in inheritance) because the Prophet (peace be upon him) said: (Allah has appointed for everyone who has a right what is due to him, and no bequest must be made to an heir.) Therefore, it is obligatory that the estate be divided among them both in the way ordained by Allah. Besides, if there are any other heirs, they should be given their due rights, and if the issue involves dispute, it should be referred to the court. Allah is the Grantor of success!

(Part No. 20; Page No. 235)

121. No bequest is to be made to an heir

His Eminence Shaykh `Abdul-`Aziz ibn Baz, **Chairman of the Departments of Da`wah and Ifta', may Allah safeguard you!**

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) I supplicate to Allah to safeguard and look after you, He is the Ever-Hearing, Ever-Acceptor of all invocations!

I hope that you would kindly answer my following question: My father-in-law (my wife's father; may Allah be merciful with him)- who was a scholar of Al-Azhar- died and left one son, the eldest, and four daughters, including my wife. Following his death, we found out that he left a will bequeathing one-third of his property to his son, and then dividing the rest of it among all his children in a legal way, meaning ﴿to the male, a portion equal to that of two females﴾ **So, is that legally permissible, be it through the consent or disagreement of his daughters who are unjustly treated through the will? Provide us with a Fatwa on the issue, may Allah reward you with the best!**

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

If things are really just as the questioner described them, the will becomes invalid since the Prophet (peace be upon him) said: ﴾Allah has appointed for everyone who has a right what is due to him,

(Part No. 20; Page No. 236)

and thus no bequest must be made to an heir.﴿ Therefore, if their case is brought to court, then the legal court is the authority on this issue and its verdict will be sufficient- in sha'a-Allah (if allah wills)- in light of the Shar`i (legal) evidence. May Allah guide us all to success! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

Chairman of the Departments of Scholarly Research,

Ifta', Da`wah and Guidance

`Abdul-`Aziz ibn `Abdullah ibn Baz

122- A Person died Leaving behind his parents, his wife, and four daughters

His Eminence the General Chairman of the Departments of Scholarly Research, Ifta', Daw`ah, and Guidance:

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

Attached is the document issued by the Higher Shar`i Court in Riyadh under No. (299/7) dated 21/8/1409 A.H., regarding the verification of the death of so-and-so and that his inheritors are confined to his father, mother, wife, and daughters exclusively. We would like to you to explain the share each one of the heirs deserves out of the estate separately so that you can give them their rights you keep with you. As-salamu `alaykum (Peace be with you!)

A: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

I have read the attached document including the statement explaining the heirs of so-and-so issued by his Eminence Judge of the Higher Shar`i Court in Riyadh under No. (299) dated 21/8/2006 A.H. I ensured through this that the deceased mentioned left the heirs you mentioned above, i.e., his father,

wife, and four daughters. Based on this, the estate is to be divided into twenty seven shares to be distributed among them: The wife has three shares; the daughters have sixteen shares to be distributed among them on equal terms; and each one of his parents has four shares. As-salamu `alaykum (Peace be with you!)

`Abdul-`Aziz ibn `Abdullah ibn Baz

A Deceased man left behind his wife,

two maternal half sisters, a full brother and a full sister

His Eminence venerable Shaykh `Abdul-`Aziz bin `Abdullah ibn Baz, **the Grand Mufty of the Kingdom, may Allah guide you to all goodness, Amen!**

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

Please, give us a Fatwa on how to distribute the inheritance of a man who died leaving a wife, a full brother and a full sister and two maternal half sisters. May Allah reward you with what is best! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

A: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

The estate is to be divided into twelve equal shares: The wife has one fourth of the estate (i.e., three shares); the two maternal half sisters have one third of the estate (i.e., four shares) to be distributed among them equally; and the rest of the estate (i.e., five shares) are for both the full brother and the full sister, where the share of a man is twice the share of a woman. May Allah grant us all success!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

Grand Mufty of the Kingdom of Saudi Arabia

`Abdul-`Aziz ibn `Abdullah ibn Baz.

A Deceased person eft a father, a daughter,

a full brother, two paternal half brothers, and a full Sister

Q 124: A man died leaving a father, a daughter, a full brother, two paternal half brothers and a full sister; how should the inheritance be distributed among them?

A: The estate is to be divided into two equal halves: One half for the daughter as inheritor by virtue of prescribed share only and the other half for the father as inheritor by virtue of both prescribed share and consanguinity. The brothers will inherit nothing as they are excluded by the father according to the Ijma' (consensus) of Muslim scholars.

Yet, if it is proven that he (the deceased) owes a certain debt, then it is to be paid off out of the estate before distributing the estate among the heirs. If there is something remaining, then it is to be distributed among the heirs as stated above. If it is proven that the deceased bequeathed a will that corresponds with Shari`ah (Islamic law), then before dividing the estate among the heirs, it is also to be fulfilled within one third or less (of the estate). It is not allowed for the deceased to will more than one third of his property. If he did so, then what is more than the third is not to be fulfilled except with the approval of the Mukallaf (person meeting the conditions to be held legally accountable for their actions) inheritors of legal age. The evidence that debt and will are given priority over dividing the estate among the heirs is Allah's (Exalted be He) Saying: ﴾Allâh commands you as regards your children's (inheritance): to the male, a portion equal to that of two females﴿ until He (may He be Praised) says: ﴾after the payment of legacies he may have bequeathed or debts.﴿

A Person died Leaving a wife,

two daughters and a maternal half brother

Q 125: A man died leaving only a wife, two daughters and a maternal half brother; does this brother deserve a share in the inheritance or not? If yes, what is the share of each inheritor, knowing that the estate he bequeathed is but his own money?

A: The estate of the deceased is to be divided into twenty four equal parts, of which the two daughters get two-thirds (16), the wife gets one eighth (3), and the remainder (five parts) should be given to the agnate heir if he has an agnate heir, however distant he may be. If he does not have an agnate heir, then these parts are to be redistributed among the two daughters according to scholars. As for the brother, he cannot inherit if there is an inheriting descendant because Allah (Glorified and Exalted be He) says in His Glorious Book: ﴾If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third﴿ The Kalalah is a deceased person leaving siblings, but neither ascending nor descending heirs. The existence of these two daughters makes the case different from that of Al-Kalalah. The maternal half brother has no share in inheritance because he lacks

the condition required for him to inherit: The condition required for the maternal half brother to inherit is that the case is to be Kalalah (a deceased person leaving siblings, but neither ascending nor descending heirs) as stated in this Noble Ayah (Qura`nic verse). Allah (Glorified and Exalted be He) says in Surah An-Nissa': ﴾If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister﴿ namely, maternal half brother or sister; ﴾each one of the two gets a sixth; but if more than two, they share in a third﴿ Since this deceased has daughters, the case is not Kalalah (a deceased person leaving siblings, but neither ascending nor descending heirs). Thus the maternal half brother has no share in inheritance. What remains after the wife and the two daughters have taken their shares, is to be given to the closest agnate heir. If the deceased has no agnate heir, then what remains is to be given to the two daughters who will inherit by virtue of both prescribed share and redistribution: (16 parts) by virtue of prescribed share and five parts by virtue of redistribution. This is the correct opinion adopted by scholars and issued by us in this Fatwa (legal opinion issued by a qualified Muslim scholar).

There is no harm on a person who

donates his inheritance from his father to his brothers

Q 126: I have a piece of land which I inherited from my dead father. Such inheritance has not yet been distributed (among heirs), and I have left the land to my brothers so that they can plant it and live on its produce, knowing that Allah has facilitated for me another source of income. So, am I negligent with regards to the right of my children to this land?

(Part No. 20; Page No. 243)

A: There is no harm on you, and you are not negligent in this case. Rather, you did well and Allah (Exalted be He) will look after your children, knowing that as you are still alive, you can manage their affairs now. Besides, they have no right with regards to the land, for the right is entirely yours. Thus, if - considering their need or out of regard for the ties of kinship- you allow your brothers to use the land, you will be rewarded for it, and there is no harm on you. Again, your children have no right in this.

The ruling of a woman's spending from the money of her dead husband during her mourning days

Q 127: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

My husband died on 24 Rajab, 1411 A.H. and left us some money, is it permissible for me to spend any part of it during the mourning days and the `Iddah (woman's prescribed waiting period after divorce or widowhood)? I hope you will enlighten me on this issue, may Allah safeguard you! .

A: As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

All the money you spent from your (deceased) husband's property is deducted from your share of inheritance unless the rest of the heirs allow you to spend from it during that period. May Allah guide us all to that which pleases Him! As-salamu `alaykum (May Allah's Peace be upon you!)

`Abdul-`Aziz ibn `Abdullah ibn Baz

Chairman of the Departments of Scholarly Research,

Ifta', Da`wah and Guidance

Impermissibility of bequeathing more

than one-third of one's wealth unless heirs consent to it

Q 128: Some women claim that their maternal aunt died leaving behind a husband, a son and two daughters from a full sister. They ask about the distribution of her estate as their aunt gave them 850 Riyals before her death to be given in charity or to buy an Ud-hiyah (sacrificial animal offered by non-pilgrims), bearing in mind that she did not perform obligatory Hajj.

A: Since she, as it is mentioned in the question, died before performing obligatory Hajj while meeting all requirements of the obligation of Hajj, it is obligatory to take a part of her estate to perform Hajj on her behalf and a part of the remainder has to be taken to pay off her debts if there is any. If there remains anything, the 580 Riyals equaling one-third or less of it, her will has to be enforced; if legally established, out of the money in question. However, if it equals more than one-third of the remainder, what is more than one-third may not be enforced unless heirs consent to it. The remainder thereafter, if there is no other heir deserving a prescribed share except the husband and there is no agnate heir, should be divided into six shares. The husband shall receive

half, i.e. three shares, and the sister's children shall receive three shares each receiving equally one share without distinction between males and females. May Allah grant us success! May peace and blessings be upon our Prophet Muhammad, his family and Companions!

It is impermissible to assign a certain part of inheritance for a specific heir

Q 129: I am a woman whose mother deprived her from inheritance. Is this permissible, given that inheritance in this case will go to my sister only? Enlighten me on this issue, may Allah enlighten you! .

A: When a person dies, inheritance becomes due to all his offspring, be they males or females. In this case, it is obligatory upon the mother, and anyone else, to be fair by not assigning anything of inheritance to a specific heir and not to deprive any other heir of their due share which has been ordained by Allah (Exalted be He). Hence, if the heir is a son and a daughter, and after deducting the share of the wife (one eighth), inheritance is divided between them both, with the male having a share equal to two females. However, if they are two sons and a daughter, inheritance should be divided into five parts; two for each son and one for the daughter. Moreover, if they are three sons and a daughter, inheritance should be divided into seven parts, six for the three sons and one for the daughter. As for the wife,

(Part No. 20; Page No. 247)

she should have one eighth anyway. Besides, if the deceased man left behind a mother, she should receive one sixth, or a father, he should receive one sixth if the deceased leaves behind children.

That is to say, the daughter should be given her due; half the share of the male. Allah (Exalted be He) says: ﴾Allâh commands you as regards your children's (inheritance): to the male, a portion equal to that of two females﴿ On the other hand, it is not permissible for the brothers to appropriate the share of their sisters, or for the mother to wrong the daughter by assigning the daughter's share to the son. Rather, it is obligatory that such a mother be fair and give every person his due share since Allah (Glorified and Exalted be He) says: ﴾Allâh commands you as regards your children's (inheritance): to the male, a portion equal to that of two females﴿ This also applies to the brothers, as Allah (Exalted be He) says: ﴾if there are brothers and sisters, the male will have twice the share of the female.﴿

Making peace among the heirs is permissible

Q 130: Our father left us shares in several companies and then gave us shares in all the companies except for several other companies, and excluded my two eldest brothers, knowing that each of them is indebted to my father with

(Part No. 20; Page No. 248)

the amount of 700 000 riyals .

Is it obligatory that we return all the shares and distribute them (among the heirs) in the right manner, or should we leave them as they are - as was done by our father - and consider it as a gift?

A: You should refer to the court and its decision will, in sha'a-Allah (if Allah wills), be sufficient. However, if you reconcile among yourselves to a certain solution, with all of you being adult and Mukallafs (meeting the conditions to be held legally accountable for your actions), then there is no harm in doing so, for Allah (may He be Praised) says: ﴾and making peace is better.﴿ It was also reported that the Prophet (peace be upon him) said: ﴾Conciliation between Muslims is permissible except the conciliation which makes the lawful unlawful or the unlawful lawful.﴿ May Allah grant success to all Muslims!

131- A deceased man leaving behind a wife, a sister and a paternal uncle's daughter

Your Eminence Shaykh `Abdul-`Aziz ibn `Abdullah Ibn Baz, **may Allah protect you!**

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!):

I would like to inform Your Eminence that a man died leaving behind a sister, a wife and a paternal uncle's daughter. Since his paternal uncle's daughter is the maternal half sister of my father, and since the deceased has no agnate heir other than her, I hope Your Eminence will inform me whether the paternal uncle's daughter of the deceased has a share in inheritance or not? Please notice that the sister of the deceased met her death about three months after him.

I hope to have a Fatwa (legal opinion by a qualified scholar) written and authenticated by Your Eminence, may Allah reward and not deprive you! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

A: Wa `alaykum As-salamu warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!):

If the reality is as the inquirer has mentioned regarding the death of the mentioned person

leaving behind his wife, one sister and a paternal uncle's daughter, then the estate should be divided into four parts: The wife should have one quarter and the remaining three quarters are for the sister through Fard (prescribed share) and Radd (Surplus redistribution) if the deceased has no agnate heir as you have mentioned in your question. As for his paternal uncle's daughter, she has no right in inheritance since she is not an agnate relative. Peace be with you!

`Abdul-`Aziz ibn `Abdullah Ibn Baz

General Chairman of the Departments of

Scientific Researches, Fatwas, Da`wah and Guidance

Chapter on Hermaphrodites

Hermaphrodite should be ruled on after reaching puberty

Q 132: Should a hermaphrodite be treated as a woman, given that their identity is unclear? Does everything that apply to a woman also applies to them such as `Iddah (woman's prescribed waiting period after divorce or widowhood), and other matters related to women?

A: The issue of a hermaphrodite needs detailed explanation; before the hermaphrodites reach puberty their identity remains unclear, and it is suspected whether they are female or male, because they have both male and female reproductive organs. However, after they reach puberty it becomes clear whether they are male or female. If the person develops feminine characteristics, such as enlarged breasts, or other signs which differentiate a female from a male, such as menstruation, or urinating through the female organs, then this person is ruled to be a female, and the male organ should be removed through safe medical procedures. On the other hand, if the person develops male characteristics, such as the growing of a beard, or urinating through the male organs or other signs

which are known to medical professionals, then they are ruled to be a male and should be treated as such. They are not judged until their gender becomes clear. Therefore, they should not get married until it is known whether they are female or male, which becomes evident after they reach puberty, as stated by the scholars.

(Part No. 20; Page No. 253)

A Chapter on the People of other Religions

Neither a Muslim inherits from a disbeliever, nor a disbeliever from a Muslim

Q 133: Is it permissible that a Muslim inherits from a person who circumambulates around the graves and supplicates to Allah in the names of the dead entombed therein or from a person who had abandoned performance of Prayer? .

A: The Prophet (peace be upon him) was authentically reported to have said: in an agreed upon Hadith : ﴿Neither a Muslim inherits from a disbeliever, nor a disbeliever from a Muslim.﴾ So, a person who circumambulates around the graves, supplicates to Allah in the names of the dead (entombed) therein and seeks help from them, is not to inherit from a Muslim, and a Muslim should not inherit him according to the preceding authentic Hadith. Such a person who circumambulates around the graves can only inherit from those like him of grave worshippers, as they are - like him - disbelievers.

(Part No. 20; Page No. 254)

On the other hand, a Muslim inherits from his fellow Muslims, as a Muslim inherits from a Muslim and not from a disbeliever, and vice versa, meaning that a disbeliever inherits from a disbeliever and not from a Muslim, since the Prophet (peace be upon him) said: ﴿Neither a Muslim inherits from a disbeliever, nor a disbeliever from a Muslim.﴾ (Agreed upon its authenticity as reported from Usamah (may Allah be pleased with him)

Likewise, this ruling also applies to a person who abandons Prayer, since - in this case - he lapses into major disbelief. Some scholars, however, viewed that such a person only falls into minor disbelief and in this case he is not considered a downright disbeliever if he still acknowledges and does not deny the obligation of Prayer. Yet, the sound opinion is that such a person lapses into major disbelief and that his Muslim heirs, i.e., relatives, should not inherit from him. Rather, his inheritance should go to the Muslim treasury, since he is then considered as an apostate through abandonment of Prayer, unless he happens to have relatives who - like him - abandon Prayer, for then they inherit from him in the way disbelievers inherit from each other.

When a disbeliever embraces Islam, his property (upon his death) becomes the right of his Muslim heirs

Q 134: What happens to inheritance which is known to have been gained through fighting with and stealing from relatives ? .

(Part No. 20; Page No. 255)

A: If the inherited money has been gained through illegal ways, such as theft, plundering, and unjust fighting, the heirs are not allowed to receive it. Rather, they are required to return it to its due owners. But, if they do not know the rightful owners, they should give such inheritance in charity on their behalf if they (rightful owners) are Muslims. However, if the testator was a disbeliever when he gained this money and then embraced Islam with it in his possession, it is to be inherited by the Muslims; unless a certain part of such money is definitely known to belong to a specific Muslim, as then it should be returned to its identified rightful owner according to the soundest of two opinions of Muslim scholars.

Chapter on the divorcee

A revocable divorced woman has the right to inherit her husband if she is in her `Iddah period

Q 135: Does a divorcee have the right to inherit from the property of her husband who died before her `Iddah was completed?

A: If the divorce was revocable and her husband died before she completed her `Iddah (woman's prescribed waiting period after divorce or widowhood), she has the right to inherit from him her prescribed share according to the Shari`ah. On the other hand, if she had completed her `Iddah, she has no share in inheritance. The same applies if the divorce was irrevocable, such as a woman who was divorced and took her rights, a woman who was divorced for the third time, and suchlike of women who were irrevocably divorced. These women do not have right to inherit from their divorced man, since at the time of his death, they were not his wives. Yet an exception of this is a woman divorced by her husband at his deathbed, where it is doubtful that he might have divorced her to deprive her of inheritance. In such a case, she has the right to inherit from him whether she is still in her `Iddah or after she has completed it, no matter whether the divorce was irrevocable or not, provided that she did not remarry, according to the soundest of two views held by scholars, so as to give him the opposite of what he intended. May Allah grant us all success!

Ruling on the inheritance of a revocably divorced woman who dies during her 'Iddah

Q 136: What is the ruling of Shari'ah (Islamic law) if a man marries a woman and, after he pronounces a first Talaq (divorce pronounced by a husband), the woman dies during her 'Iddah (woman's prescribed waiting period after divorce or widowhood)? Does the husband have a share in her inheritance?

A: If a woman dies during her 'Iddah following a revocable divorce, her husband inherits from her according to Ijma' (consensus of scholars), as she comes under the ruling of his wife as long as she is in her 'Iddah. If he dies, she would also inherit from him. However, if it is irrevocable divorce, such divorce that takes place on the wish of the wife after giving her husband money in return for divorcing her, Khul' (divorce initiated by a wife for a consideration) in return for money which the husband fulfills without uttering the word of Talaq, nullification of marriage by the ruler for a Shar'y (Islamic legal) justification, or the third pronouncement of Talaq, provided that the husband is not accused of doing it for the purpose of depriving her of the inheritance, the separation in these four cases is irrevocable and so the spouses do not inherit from each other at all.

(Part No. 20; Page No. 258)

A woman's husband dies before consummating marriage

Q 137: I have a fourteen-year-old sister. She was engaged to her cousin and the marriage contract was concluded, but he died before consummating the marriage. Please advise whether she has to go through the widow's mourning period, half of it only or not at all. Does she have a share in his inheritance, given that they did not consummate the marriage and he did not give her any gifts? Please advise. May Allah reward you.

A: If a man dies before consummating his marriage, his wife has to go through the widow's mourning period and has a share in his inheritance. This is according to Allah's Saying (Exalted be He): ﴾And those of you who die and leave wives behind them, they (the wives) shall wait (as regards their marriage) for four months and ten (days)﴿ He (Glorified be He) did not differentiate between those whose marriage was consummated and those whose marriage was not; the ruling in the Ayah (Qur'anic verse) is general. It was authentically reported from the Messenger of Allah (peace be upon him) that he said, ﴾A woman should not observe mourning for any dead person for more than three days, except for four months and ten days in the case of her husband.﴿

(Part No. 20; Page No. 259)

The Prophet (peace be upon him) did not differentiate between a woman whose marriage was consummated and one who has not. Allah (Exalted be He) also says, ﴾In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts.﴿ Allah (Glorified and Exalted be He) did not differentiate between those whose marriage were consummated and those who were not. This indicates that a wife inherits her husband, whether they have consummated the marriage or not, unless there is an impediment such as slavery, murder (of her husband to inherit him), or difference in religion.

a wife inherits from her husband even if she remains disobedient to him until his death

Q 138: There was a wife whose husband had asked her to come to bed with him, but she refused him due to psychological reasons, i.e. she had no desire for it for about 6 years. They had been married for 50 years, but this did not happen to her until after the time I mentioned.

(Part No. 20; Page No. 260)

Her husband has died; does she still have a share in his inheritance?

A: If he had not divorced her, she does inherit from him, even if they had separated physically from each other until his death. She should perform Tawbah (repentance to Allah), Istighfar (seeking forgiveness from Allah), regret what she did, and supplicate to Allah for him.

A person who caused the death of their bequeather with the intention of saving them should be referred to the court to judge in the inheritance if the inheritors claim it

Q 139: While I was driving my car, another car came in the opposite direction. I used the lights and the horn to warn the driver, but he was asleep, so I was obliged to get off the road. My car overturned, causing the death of my father and my cousin. Do I have to pay Kaffarah (expiation)?

A: It seems that you do not have to pay Kaffarah if you got off the road to save yourself and the other passengers from the danger of the car that was coming in the opposite direction, which is a greater danger.

(Part No. 20; Page No. 261)

You should refer to the court concerning the inheritance of your father if the other inheritors dispute you.

A murderer is not entitled to any share of inheritance

Q 140: If a man kills his brother, and his father forgives the murderer, does the murderer inherit the murdered one?

A: A murderer does not inherit the person whom they murdered if the murder was premeditated. If it is involuntary manslaughter that necessitates Diyah (blood money) or Kaffarah (expiation), he does not inherit, neither. This is according to the saying of the Prophet (peace be upon him), (A murderer is entitled to nothing from (their victim's) inheritance.) Scholars (may Allah be merciful with them) unanimously agreed that a murderer does not inherit the murdered person if the murder is out of transgression. However, if the inheritors agree, there is no harm in sharing the inheritance with him if they are Mukallafs (persons meeting the conditions to be held legally accountable for their actions) and agree on it. This is because it is their right whom they concede.

(Part No. 20; Page No. 262)

(Part No. 20; Page No. 263)

Book of emancipation

141- Emancipation of a female slave does not affect her marriage, and she has the choice if her husband is a slave

To His Eminence, the honorable Shaykh, `Abdul-`Aziz Ibn Baz.

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you.)

Please be advised that I had a female slave. When the government began to compensate slave owners, I exchanged her for money and she became free.

This slave was married while she was mine. Is she lawful for her husband now, having been bought and sold, or is she considered divorced? Appreciate your guidance, may Allah reward you in this world and in the Hereafter.

(Part No. 20; Page No. 264)

A: Wa `alaykum as-salam warahmatullah wabarakatuh.

If the reality is as you mentioned, this slave is still married to her husband; selling and freeing her does not nullify their marriage. However if her husband is also a slave and she has been set free, she has the choice whether to stay with him or leave him, according to what was mentioned in the following Sahih (authentic) Hadith on the authority of `Aishah (may Allah be pleased with her) that (she bought a slave girl called Burairah and freed her. She was married at that time, so the Prophet (peace be upon him) gave her the choice whether to stay with him or leave him.) He did not consider her selling or freeing as a cause to nullify her marriage. May Allah guide you and us to what pleases Him, grant all of us comprehension of religion and help us adhere to it. He is All-Hearer, Ever Near. As-salamu `alaykum warahmatullah wabarakatuh.

`Abdul-`Aziz ibn `Abdullah Ibn Baz

(Part No. 20; Page No. 265)

142- Authorization in the emancipation of a bondsman

His Eminence Shaykh `Abdul-`Aziz ibn `Abdullah ibn Baz, the General Mufty of the Kingdom of Saudi Arabia, may Allah grant you success!

As-salamu `alaikum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

I regret to inform Your Eminence that I accidentally caused the death of my younger brother when I was backing up my car, and now I must pay Kaffarah (expiation) for involuntary manslaughter. I tried to observe Sawm (Fast) for two consecutive months, but I could not, so I decided to emancipate a bondsman. Finally, I found a bondsman in an Islamic country in Africa through some trustworthy shaykhs, so I asked them to buy him on my behalf with the intention of emancipating him. They told me it would cost 10000 Saudi Riyals in his country. His master can sell him, but he cannot send him to Saudi Arabia due to the laws in his country. He will only tell the bondsman that he was sold to me and that I emancipated him.

Is it permissible for me to buy the bondsman and delegate another man to emancipate him in that country on my behalf?

Please advise, may Allah protect and safeguard you! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

(Part No. 20; Page No. 266)

A: Wa `alaikum as-salam warahmatullah wabarakatuh. (May Allah's Peace, Mercy, and Blessings be upon you!)

If that mediator is a trustworthy person, there is no harm in authorizing him to buy the bondsman and emancipate him on your behalf. Thus, your conscience will be clear in sha'a-Allah (if Allah wills) according to Allah's (Glorified be He) Saying: ﴾So keep your duty to Allâh and fear Him as much as you can﴿ He (Glorified be He) also says: ﴾Allâh burdens not a person beyond his scope.﴿ May Allah grant us all success! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

Grand Muft of the Kingdom of Saudi Arabia

`Abdul-`Aziz ibn `Abdullah ibn Baz

(Part No. 20; Page No. 267)

Book on Marriage

(Part No. 20; Page No. 268)

(Part No. 20; Page No. 269)

143- Prohibited forms of marriage

All praise be to Allah, and may Allah's peace and blessings be upon the Messenger of Allah, his family, Companions and those who followed his guidance! To proceed:

Allah (Glorified and Exalted be He) prescribed marriage and prohibited Zina (premarital sexual intercourse and/or adultery). He also prohibited the perverted forms of marriage that were practiced during Jahiliyyah (pre-Islamic time of ignorance), some of which were allowed in Islam and were later abrogated. As for the Shar`y (Islamically lawful) marriage which is contrary to Zina, it must include the woman's consent, mediation of the Waliy (a legally accountable person representing a woman seeking marriage), announcement, and two witnesses. This is the Shar`y (legal) marriage about which Allah (Glorified and Exalted be He) says: ﴾And marry those among you who are single (i.e. a man who has no wife and the woman who has no husband) and (also marry) the Sâlihûn (pious, fit and capable ones) of your (male) slaves and maid-servants (female slaves). If they be poor, Allâh will enrich them out of His Bounty. And Allâh is All-Sufficient for His creatures' needs, All-Knowing (about the state of the people).﴿ The Prophet (peace be upon him) also said: ﴾O, young people! Whoever among you is able to marry, should marry, for marriage would help him lower his gaze and keep his virtuousness. Whoever is not able to marry is recommended to observe Sawm (fast), for Sawm would diminish his sexual power.﴿

(Part No. 20; Page No. 270)

The Prophet (peace be upon him) also said: ﴾Marry women who are fertile and loving, for I shall outnumber the peoples by you on the Day of Resurrection.﴿ In another narration: ﴾for I shall

outnumber the Prophets by you on the Day of Resurrection.) Further, the Prophet (peace be upon him) also said: (A woman is married for four things: her beauty, her wealth, her family status, and her faith. You should marry the faithful one; otherwise you will be losers.) And: (If someone with a satisfactory standard of Iman (Faith) and good conduct comes to you seeking marriage, then give him (your daughter or sister) in marriage. If you refuse, that will lead to spread of evil and great corruption in the earth.) In another narration, (and wide corruption.)

There are many other Hadiths to the same effect and which all encourage marriage. The Noble Qur'an also promotes the sanctity of marriage and stresses its importance. Allah (Exalted be He) says: (then marry (other) women of your choice, two or three, or four; but if you fear that you shall not be able to deal justly (with them), then only one or (the slaves) that your right hands possess. That is nearer to prevent you from doing injustice.)

Allah (Glorified be He) prescribed marriage to protect people from immorality and increase the number of the Ummah (nation based one creed). If not for marriage,

(Part No. 20; Page No. 271)

the Ummah would perish. It is out of Allah's Mercy that He allowed marriage and made men and women naturally inclined to each other to ensure procreation and the continuity of the Ummah until the time fixed by Allah (Glorified and Exalted be He). He prescribed steadfastness upon what He sent with His prophets starting from Adam until our present day; He prescribed marriage and adherence to what people were created for, which is worshipping Allah (Glorified and Exalted be He). Thus, people will continue to worship Allah in the earth, remain in remembering Him (Glorified be He), obeying His Commands and refraining from His Prohibitions. He fixed a time for this world; after which it will end and the Day of Resurrection will come and people go to either Jannah (Paradise) or Hellfire, each according to their deeds. Those who follow Ihsan (the perfection of Faith) in this world and obey Allah and His Messenger will go to the Abode of Bliss, which is Jannah; whereas those who are corrupt, evil, obedient to Satan and disobedient to Allah will go to the Abode of Torment and Punishment, which is Hellfire, we seek refuge with Allah from it!

There are a number of factors prescribed in marriage: The man and woman must be free from impediments, fit for marriage, both are Muslims or Kafirs (disbelievers), or the man a Muslim and the woman of the People of the Book, whether a Jew or a Christian, provided that she is chaste. Marriage should be this way, either between two Muslims or two disbelievers,

(Part No. 20; Page No. 272)

or between a Muslim man and a chaste, non-Muslim woman, whether she is a Jew or a Christian. If one of these conditions is not met, this constitutes an impediment. If the man is a Muslim and the woman is neither a Muslim nor one of the People of the Book, such as a Pagan, a Magi or a Communist, the marriage is not valid. The woman must also be free from impediments; she must not be in her `Iddah (woman's prescribed waiting period after divorce or widowhood) or married to another man; she must be either divorced, a widow whose `Iddah has come to an end, or a virgin. There are also other impediments of kinship, breastfeeding and affinity; there must be no relation between them that prevents marriage, such as her being his sister, his paternal or maternal aunt, his niece, any such foster relative, his wife's daughter with whom he had consummated marriage, his wife's mother, or his wife's grandmother. It is impermissible to marry her in all these cases. If the couple is free from such impediments, and the legal condition of the spouses consent is met, marriage is permissible. However, there is an exception in the case when the girl is young and her father chooses a righteous man for her. If she is less than nine years old, her consent is not taken. What Al-Siddiq [namely Abu Bakr, may Allah be pleased with him] did so when he gave his daughter

`Aisha (may Allah be pleased with her) in marriage to the Prophet (peace be upon him) when she was six or seven years old without having her consent because she was too young. When a girl becomes nine years old, her consent must be taken.

If the bride is a virgin, her silence is her consent. If she is a previously married woman, she should declare her consent explicitly. There must also be a Waliy (a legally accountable person acting for a woman seeking marriage) and two witnesses. If the conditions of marriage are met, this marriage is valid and Shar`y (legal), provided that it is with the intention of lasting forever, not for Tahlil (a marriage contracted for the sole purpose of legalizing remarriage between an irrevocably divorced couple) or for a fixed period of time. They should marry with the intention of staying with each other, to keep one another chaste, have children and other benefits.

144- Some forms of marriage contradict with Shar`y (legal) marriage, including Mut`ah marriage (temporary marriage for a stipulated period)

It means marrying a woman for a fixed period of time, after which their marriage comes to an end, such as a month or two. This form of marriage was allowed at one time, and then was abrogated and prohibited for the Islamic Ummah (nation based on one creed). It was reported in the Sahih (authentic) Hadith that the Prophet (peace be upon him) said: ﴿I permitted you to contract Mut`ah marriage (temporary marriage for a stipulated period), but Allah has forbidden it (now) until the Day of Resurrection. He who has any (woman with this type of marriage contract) he should let her go, and not take back anything you have given to them as Mahr (mandatory gift to a bride from her groom).﴾ It was authentically reported on the authority of `Aly (may Allah be pleased with him), Salamah ibn Al-Akwa`, Ibn

(Part No. 20; Page No. 274)

Mas`ud and others that the Messenger of Allah (peace be upon him) prohibited Mut`ah marriage (temporary marriage for a stipulated period), so it was settled in Shari`ah (Islamic law) that it is prohibited and that Shar`y (Islamically lawful) marriage is one in which a man and a woman want to live with each other forever, for the purpose of achieving chastity, procreation and cooperation in goodness. This is the Shar`y marriage permitted by Allah, whose conditions were previously mentioned. Allah (Glorified and Exalted be He) made it goodness for the Muslim Ummah; it entails cooperation, increase of the progeny, chastity of men and women and their favor towards each other. The man does a favor to the woman by keeping her chaste, providing for her, maintaining her, protecting her from immoral men and so on. A woman, on the other hand, helps her husband in his worldly and spiritual affairs, keeps him chaste, and helps him during calamities. Mut`ah marriage (temporary marriage for a stipulated period) was abrogated in Islam forever. `Umar ibn Al-Khattab (may Allah be pleased with him) used to threaten those who did it with stoning to death like an adulterer, because Allah prohibited it in Shari`ah (Islamic law) forever. However, Rafidah (a Shi`ah group denying the caliphates of Abu Bakr Al-Siddiq and `Umar ibn Al-Khattab and slandering them and many other Companions of the Prophet) still consider this form of marriage lawful and practice it, as reported in their books. This is one of the matters that were used against them and one of their deviations from the straight path. Thus, no reasonable person should believe them;

(Part No. 20; Page No. 275)

we should beware of their falsehood. A Mu'min (believer) should unmistakably acknowledge that this form of marriage is invalid and prohibited by Allah (Exalted be He). It was already mentioned the Hadith of Samrah ibn Ma`bad Al-Jahni, on the authority of the Prophet (peace be upon him) that he said: ﴿I permitted you to contract Mut`ah marriage, but Allah has forbidden it (now) until the Day of Resurrection. He who has any (woman with this type of marriage contract) he should let her go, and do not take back anything you have given to them as Mahr.﴾ (Related by Muslim in his Sahih)

This Nas (Islamic text from the Qur'an or the Sunnah) and others that carry the same meaning indicate that Naskh (abrogation) remains in effect until the Day of Resurrection; there is no way that

it is still Halal (lawful). Rather, it was abrogated and will remain so until the Day of Resurrection. Temporary marriage is in which a man and a woman agree to marry for a fixed period of time. When this period comes to an end, they separate without the need for Talaq (divorce pronounced by a husband). They might stipulate divorce, but it is Mut`ah Talaq (temporary divorce) as well; they might agree upon marrying for two or three months, then he divorces her and she observes `Iddah (woman's prescribed waiting period after divorce or widowhood). Temporary marriage is Mut`ah marriage (temporary marriage for a stipulated period) in all cases, whether there is divorce or just separation at the end of its fixed time. It is Haram (prohibited) according to the legal text

(Part No. 20; Page No. 276)

and Ijma` (consensus of scholars) among Ahl-ul-Sunnah wal-Jama`ah (those adhering to the Sunnah and the Muslim main body).

145- The second form of marriage prohibited by Allah and committed by some people is Tahlil marriage

Tahlil (a marriage contracted for the sole purpose of legalizing remarriage between an irrevocably divorced couple) is a form of marriage concluded by a person whose wife is prohibited to him by force of the third occurrence of divorce. Some people, out of weak Iman (Faith) and lack of fear of Allah, might agree with another man to marry his ex-wife. When he consummates his marriage with her through intercourse, he leaves her so that she may return to her ex-husband. This is the form of marriage called Tahlil (a marriage contracted for the sole purpose of legalizing remarriage between an irrevocably divorced couple). It was authentically reported from the Messenger of Allah (peace be upon him) that ﴾he cursed the Muhallil (a man who marries an irrevocably divorced woman for the sole purpose of making her lawful for her ex-husband to remarry) and the Muhallal-la-hu (the ex-husband of the woman who was irrevocably divorced, seeking to remarry her through an unlawful marriage).﴿ A Muhallil (a man who marries an irrevocably divorced woman for the sole purpose of making her lawful for her ex-husband to remarry) is like a borrowed breeding bull; the husband is the one who asks him to marry his ex-wife; and the Muhallal-la-hu (the ex-husband of the woman who was irrevocably divorced, seeking to remarry her through an unlawful marriage) is the ex-husband who divorced his wife. This form of marriage is invalid and Batil (null and void) if they agree on it out of manipulation, whether by word of mouth or in writing. All this is prohibited according to the Hadith mentioned about cursing the Muhallil and the Muhallal-la-hu. This was also mentioned in many Hadiths reported on the authority of Ibn Mas`ud, Abu Hurayrah and others. In another narration reported from the Prophet (peace be upon him) he said: ﴾"Shall I tell you about the borrowed breeding bull?" We said, "O, yes, Messenger of Allah!" He said, "He is the Muhallil; may Allah curse the Muhallil and

(Part No. 20; Page No. 277)

the Muhallal-la-hu."﴿ He was called a borrowed breeding bull because he is brought not as a husband, but only to have intercourse once and then divorce this woman. Allah (Glorified and Exalted be He) says about a woman who is irrevocably divorced: ﴾And if he has divorced her (the third time), then she is not lawful unto him thereafter until she has married another husband.﴿ When a husband realizes that he cannot return to his wife except after she marries another man, and both of them want to return to each other, Satan encourages them to commit this evil deed; They agree with a Muhallil to marry the woman temporarily in return for a sum of money. They usually do not care about his status, his origin or his competence; all that matters is that he has intercourse with her once and then divorces her to make it lawful for her ex-husband to return to her. This is one of the worst kinds of mischief. Such a man is considered an adulterer, because he does not marry this woman for the purpose of true marriage, chastity, and procreation; he only intends to make it lawful for her husband to return to her by a one-time sexual encounter. This marriage is void, and not Shar`y (Islamically lawful). If this is known, she is not considered lawful for her ex-husband. Such a man deserves Ta`zir (discretionary punishment) so that he is deterred from such acts. The wife deserves Ta`zir as well if she consented to this evil, because this form of marriage is Fasid (void), unacceptable and a sin. Whoever, takes part in it: the Muhallill, Muhallilah (an irrevocably divorced woman)

the Muhallal-la-hu and the wife deserve Ta`zir. If the Muhallil wants to go on with his marriage, it is unlawful for him to do so because he married her with this intention, which makes this marriage corrupt. She becomes lawful neither for him nor for her ex-husband, because this is not considered marriage. Allah (Exalted be He) says: ﴾until she has married another husband.﴿ This is not a husband, but rather a "borrowed breeding bull", so he does not make her lawful for her ex-husband.

146- The third kind of invalid marriage is called Shighar marriage (exchange of daughters or sisters for marriage with no mandatory gift to a bride from her groom) which some people call Al-Badal marriage (a pre-Islamic practice of mutually exchanging wives). Under such kind of marriage, each Waliy (a legally accountable person acting for a woman seeking marriage) stipulates a condition to marry the ward of the other in exchange. For example, one says to the other, give me your daughter or your sister in marriage for me or for my son and I will give you my daughter or sister in marriage for you or for your son in exchange and the like. This is called Shighar marriage (exchange of daughters or sisters for marriage with no mandatory gift to a bride from her groom) based on the linguistic sense of the word; it denotes either vacancy, i.e., no Mahr (mandatory gift to a bride from her groom) is fixed for what matters is the agreement on the act rather than the Mahr, or the fact that the marital relationship of one couple is conditional on the other's.

(Part No. 20; Page No. 279)

Anyway, this kind of marriage is Munkar (that which is unacceptable or disapproved of by Islamic law and Muslims of sound intellect) and invalid, even if Mahr is paid or fixed, for it was authentically reported that ﴾The Prophet (peace be upon him) forbade Shighar marriage﴿ in the Hadith reported on the authority of Ibn `Umar (may Allah be pleased with them). There are also Hadiths reported on the authority of Jabir and Mu`awiyah (may Allah be pleased with them) and others regarding the prohibition of Shighar marriage. In the Hadith reported on the authority of Abu Hurayrah, Shighar marriage (exchange of daughters or sisters for marriage with no mandatory gift to a bride from her groom) occurs when one man says to another: "Marry your daughter to me and I will marry my daughter to you; or marry your sister to me and I will marry my sister to you". However, with regard to the report of Ibn `Umar (may Allah be pleased with him): "Shighar marriage is that one man gives his daughter in marriage to another on the basis that he (the latter) will give him (the former) his daughter in marriage with no Mahr between them", the scholars have stated that these are the words of Nafi`, the freed bondsman of Ibn `Umar and are not the words of the Prophet (peace be upon him). Others held the view that they are the words of Malik ibn Anas, the narrator who transmitted it from Nafi`. In any case, these were not of the words of the Prophet (peace be upon him); rather, the words of one of the narrators, either Nafi`, the freed bondsman of Ibn `Umar or Malik. Al-Hafizh ibn Hajar (may Allah have mercy on him) stated in his book entitled Al-Bulugh: "They agreed, otherwise, that the definition of Shighar was given by Nafi` rather than the Prophet (peace be upon him). Al-Bukhari and Muslim agreed that this is of the interpretation of Nafi`, and not the

Prophet (peace be upon him). Some scholars (may Allah have mercy on them) adopted the view of Nafi`; they stated that the marriage is to be considered Shighar if no Mahr is paid; however, if the Mahr is given in full

to both brides, there is no trickery and so it is not considered Shighar. However, this is a weak and unlikely view. The correct view is that it is definitely considered Shighar, if it entails the condition (of exchange), based upon the explicit meaning of the Hadiths of the Prophet (peace be upon him), for in the Hadith narrated on the authority of Abu Hurairah: he said: "Shighar is when one man says to another: 'Marry your daughter to me and I will marry my daughter to you; or marry your sister to me and I will marry my sister to you.'" He did not mention that there is no Mahr between them. It was authentically reported in "Musnad (Hadith compilation of) Imam Ahmad" and "Sunan (Hadith compilations classified by jurisprudential themes) Abu Dawud through a Sahih (authentic) Sanad (chain of narrators) on the authority of Mu`awiyah (may Allah be pleased with him) (that the ruler of Madinah referred to him the case of two men who concluded a Shighar marriage and gave the Mahr, but Mu`awiyah (may Allah be pleased with him) wrote to the ruler of Madinah ordering him to separate them, and he said in his letter: "This is the Shighar which the Prophet (peace be upon him) forbade.") He issued this ruling though the two men gave a Mahr. This indicates that Shigar is what stipulates giving one's ward in marriage in exchange for someone else's ward, whether the Mahr is fixed or not. The wisdom behind prohibiting Shighar is -and Allah knows best - that it is a form of injustice towards women, forcing them to marry men they do not want as it shows indifference towards their Mahr. It leads also to a great deal of arguments and disputes. It is out of Allah's Mercy that He prohibited this kind of marriage, so that women will not be forced wrongfully into marrying whom they do not like and will not be oppressed. This is also to block the way to disputes and arguments. Those who engage in this marriage suffer great evils and undergo a great deal of disputes

and arguments. If anything occurs between one couple and the wife leaves the matrimonial home for any reason, the wife of the other couple leaves her home as well, or her Waliy (a legally accountable person acting for a woman seeking marriage) may order her to do so till the first returns to her home. Similarly, any dispute that occurs between one couple adversely affects the other, as one marriage is conditional on the other; thus, any dispute affects all parties. Also, the Waliy (a legally accountable person acting for a woman seeking marriage) does not pay any attention to the woman. Rather, he may keep and hurt her till he finds another woman whom he could take in marriage for himself, his son, his nephew, or his brother. In this way, women will be forced to serve the needs and interests of their Waliy (a legally accountable person acting for a woman seeking marriage). Therefore, Allah prohibits Shighar and forbade it through His Messenger (peace be upon him), so that women will be treated unjustly and will not be given in marriage subject to the whims and benefits of their Waliys. Rather, the Waliy should seek the appropriate husband for his ward and not make it conditional on the marriage of the son, brother or uncle of so-and-so; this is Shighar marriage which is known as Al-Badal marriage (a pre-Islamic practice of mutually exchanging wives). The correct opinion is that Shighar marriage is not permissible at all, regardless of whether Mahr is fixed or not. This is the most preponderant opinion of the scholars on this issue, which is in accordance with the Sahih Hadiths and the reason for which Allah and His Prophet (peace be upon him) prohibited Shighar, for it leads to grave evils, even if the Mahr is fixed.

Allah is the One Who is sought for help! There is neither might nor power except with Allah! I ask Allah to grant all Muslims well-being and keep them away from whatever displeases Him! It is the duty of whomever receives this information to deliver it to others, for many people in both urban and rural societies engage in Shighar. Therefore, we should inform all people of the prohibition of this kind of marriage, particularly at this time when Mahrs have become very high, so that everyone will keep his daughter or his sister till he finds one who will give him his daughter or sister in exchange. Consequently, the daughter or sister may reach thirty or forty and her father or brother keeps her till he finds one who will marry him or his son. This is clear-cut injustice and explicit sin. Therefore, you should inform whoever does this and ask him to fear Allah and His Wrath. This Shighar marriage is a grave injustice towards women and so is not permissible at all under such conditions. May Allah grant us all guidance and safety!

Q147- On the widely circulated Nour `Ala Al-Darb program, this matter was deemed lawful as long as there is a determined Mahr (mandatory gift to a bride from her groom). A comment on this should be publicized. Though this opinion is not permissible, some people believe it is when they hear it. If there is a determined Mahr (mandatory gift to a bride from her groom), does this render it permissible?

A: In either case this is wrong. Surely, we will enquire about the person who issued this opinion

(Part No. 20; Page No. 283)

and will arrange a debate till we establish the correct opinion In sha'a-Allah (if Allah wills). This will be publicized so as to avoid its great harm and other aspects that people will realize when they contemplate them. This opinion contradicts the texts narrated from the Prophet (peace be upon him). The viewpoints and personal reasoning of scholars (may Allah be merciful with them) must be analyzed in the light of the Glorious Qur`an and the Sunnah. Scholar's opinions that coincide with the Glorious Qur`an and the Sunnah are to be accepted, whereas those that contradict the Glorious Qur`an and the Sunnah are to be rejected. Allah (Exalted be He) says: ﴾(And) if you differ in anything amongst yourselves, refer it to Allâh and His Messenger (صلى الله عليه وسلم), if you believe in Allâh and in the Last Day. That is better and more suitable for final determination.﴿ And: ﴾And in whatsoever you differ, the decision thereof is with Allâh (He is the ruling Judge).﴿ This is what is obligatory upon the people of knowledge, i.e. to refer disputes to Allah and His Messenger in order to put an end to controversies and in order for the nation to unite on what is right and the guidance that will benefit and cause it no harm.

Q 148: What is the fate of children born as a result of Shighar marriage (exchange of daughters or sisters for marriage with no mandatory gift to a bride from her groom)?

A: They are to be attributed to their father because this is a doubtful marriage as some scholars deem it to be lawful if there was a Mahr (mandatory gift to a bride from her groom) or because some people marry this way without knowing its ruling or asking about it, rather they assume that there is no harm in this. Accordingly, there is no doubt that the children are to be attributed to their father due to the complexity of this issue.

(Part No. 20; Page No. 284)

However, a couple who have married in this way must be advised to renew the marriage contract. The man should inform the woman that there is some controversy in her remaining with him as a wife. He should renew the marriage contract without having to divorce her. He should renew the marriage contract with her Waliy without any condition, and should consummate this new marriage. This way, there will be no harm. If she does not want to live with him, then he can divorce her. Allah will provide abundantly for everyone of them from His Bounty! Allah (may He be Praised) says: ﴾But if they separate (by divorce), Allâh will provide abundance for everyone of them from His Bounty.﴿

Q 149: If two brothers agree to marry their sons and daughters to each other without Mahr (mandatory gift to a bride from her groom), will they be included amongst those who enter into Shighar marriage (exchange of daughters or sisters for marriage with no mandatory gift to a bride from her groom)?

A: This is not a Shighar, unless it is conditional. But, if this man asks for the woman in marriage, and similarly does the other, having the parents of both parties agree with no conditions; this is permissible. However, there should be a Mahr for each girl, equivalent to that of her counterpart, even if it is not called so, for it is an obligation according to Allahs (Glorified and Exalted be He) Saying: ﴾There is no sin on you, if you divorce women while yet you have not touched (had sexual relation with) them, nor appointed unto them their Mahr (bridal-money given by the husband to his wife at the time of marriage).﴿ Accordingly, the marriage is valid. Then, Allah (Exalted be He) says: ﴾But bestow on them (a suitable gift)﴿ It was also reported related in the authentic Hadith: ﴾that the Prophet (peace be upon him) was asked about the woman to whom no Mahr has been assigned, he said: "She should have

(Part No. 20; Page No. 285)

a Mahr equal to that of her peers with no reduction or increment﴿ .

Q 150: When they discuss the dowry, they used to say that her dowry is clothes, gold and garments?

A: If they accept it, then it is not a problem, if they accept clothes, jewelry or dirhams, gold and silver then it is enough. Permanent Committee for Scholarly Research and Ifta'

Q 151: I have a full sister who has reached twenty years of age without getting married. Whenever a man proposes to marry her she refuses, saying, "I consent only to being given in marriage to a son of my paternal uncles". It is worth mentioning that most of the sons of her paternal uncles do not perform Salah (Prayer). I hope Your Eminence will guide us to a way out of this impasse?

A: It is up to her. If a person proposes to marry her, she refuses and wants only one of the sons of her paternal uncles, she should be advised that it is not conditioned that you marry one of your cousins. Perhaps they do not want to marry you; they may want to marry women other than you, either some woman who is more beautiful than you, or for any other reason. On the other hand, the sons of your paternal uncles may be not good because they are disobedient and do not perform Salah. Thus there is no good reason to wait for them. It may be that Allah may guide them and turn to them in repentance, but there is no good reason for waiting for them, because young woman and men are liable to temptation. Thus marriage should be hastened but not delayed if

a suitable husband comes. Her guardians should advise and direct her to what is good, so that she can accept the good suitor, even if he is not one of her cousins. This is what is obligatory for her guardians to do. On the other hand, her guardians should not confine her marriage to the sons of her paternal uncles. There may be some of her guardians who might say to the girl that if she does not marry a son of her paternal uncles she will remain his house and keep her in the house or oblige and force her to marry one of her cousins. However, her cousins may be unrighteous or may be stained with faults, and this is disapproved of by the woman. Thus it is not permissible for her father to force her to marry a son of her paternal uncles nor it is permissible for the sons of her paternal uncles to compel and warn threaten her if she refuse to marry other than them... All this is not permissible and is out of the practices of the pre-Islamic period of ignorance. It is not permissible for her father nor for the sons of her paternal uncles to compel her. It is not permissible for them to threaten the person who married her that he will be killed, beaten, etc. All this is out of the practices of the pre-Islamic period of ignorance. When knowing this, those in authority should reproach and discipline whoever commits this so as to deter injustice and put an end to what stirs corruption.

Q: If a man marries a young woman and then finds that she is not a virgin, what should he do?

A: This may be due to several reasons; virginity may be lost due to other reasons than Zina (premarital sexual intercourse and/or adultery), so he should think well of her if she is apparently good and righteous. She may have committed

(Part No. 20; Page No. 287)

Q: How can a husband know that his wife is not a virgin due to a reason other than Zina (premarital sexual intercourse and/or adultery)?

A: It is not necessarily that her virginity is lost by Zina, unless he is quite sure that she committed it. This is because virginity may be lost as a result of intense menstruation or other reasons such as strenuous exercise movements; she may have been raped in which case she is ruled as innocent. She maybe lost her virginity due to a fourth reason, meaning that she committed Zina willingly, but

(Part No. 20; Page No. 288)

she repented sincerely to Allah (Exalted be He) of this and became virtuous after regretting what she did.

Q: In some countries, people like to see the virginal blood on the bride's garment and announce her virtuousness the next morning in daylight. If a husband finds his wife has no hymen and wants to conceal her secret, he is ordered to divorce her. In this case, should the bride's family give the husband back the Mahr (mandatory gift to a bride from her groom) he paid?

A: If it is necessary to show the bride's virtuousness by blood on her garment according to their traditions, the husband can use any other blood to protect her, if otherwise she would be accused of Zina (premarital sexual intercourse and/or adultery). The Prophet (peace be upon him) said: ﴾Whoever conceals (the faults) of a Muslim, Allah will conceal their faults in this life and in the Hereafter.﴿

Q 155: A woman was divorced by her husband for the third time, then she married another man who also divorced her. Afterwards, she returned to her first husband, so will he have another three rights of Talaq (divorce pronounced by a husband) to give?

A: This is true, if he divorced her irrevocably and she remarried man, consummated the marriage, then was divorced or widowed from the second husband, and returned to the first;

he has the three rights of divorce as in a first-time marriage. However, if he divorced her once or twice, then she remarried, thereafter she returned to him, she would have one or two more times according to what remained from the first marriage. But, as previously mentioned, if the first husband divorced her thrice, and she married another man and consummated her marriage, then was divorced and returned to her first husband, he reserves the three rights of divorce as in a first-time marriage.

The case of a minor irrevocable divorce is when a man divorces his wife once or twice, then takes her back either by pronouncing (i.e., during `Iddah (woman's prescribed waiting period after divorce or widowhood)) or with a new marriage contract as in Khul` (divorce initiated by a wife). At that time her returning back to him shall be based on the remaining rights of divorce.

Q 156: Is a woman's husband a Mahram (unmarriageable) to her sister and aunt so he can sit alone with any of them?

A: No, a woman's husband is not a Mahram (unmarriageable) to her sister or aunt. The husband of a woman is not a Mahram (unmarriageable) neither to her sister, nor to her maternal or paternal aunts. It is only that he cannot combine any of them in marriage along with his wife, which means that he is a temporary Mahram to them. Similarly, the husbands of a girl's sisters or her maternal or paternal aunts are not Mahrams of her. On the other hand, neither the paternal aunt nor the sister nor the maternal aunt of the wife of the mentioned husband is a Mahram of him since they are temporarily unmarriageable to him, i.e. once he divorces their sister, the daughter of their brother, or the daughter of their sister,

(Part No. 20; Page No. 290)

it is permissible for him to marry any of them after `Iddah (woman's prescribed waiting period after divorce or widowhood). It seems that some people are lenient in dealing with some women; some women are lenient in dealing with the husbands of their sisters; and some women are lenient in dealing with the brother of their husband or the paternal uncle of their husband. This is wrong and not permissible. It is not permissible for a woman to be lenient in dealing with her brother-in-law, since he is not a Mahram to her. Likewise, neither his (the husband's) paternal or maternal uncle is a Mahram to her (the wife). Rather, her Mahrams on his side are his father and son. As for the husband's brother, paternal uncle, paternal uncle's son, and maternal uncle; none of them are a Mahram to the wife. Similarly, neither the husband of a girl's (woman's) sister, nor the husband of her paternal or maternal aunt is a Mahram to her. Rather, her Mahrams are the husband of her daughter and the husband of her mother. As for the husband of a woman's sister and the husband of her paternal or maternal aunt; none of them is a Mahram to her. She should wear Hijab (veil) in front of them and should not sit alone with any of them.

157- Mut`ah marriage

All praise be to Allah, peace and blessings be upon the Seal of the Prophets, Muhammad, and upon his family and Sahabah (Companions). To proceed:

It is proven beyond doubt that the Prophet (peace be upon him) said that Mut`ah marriage (temporary marriage for a stipulated period) is permissible. Then, it was completely prohibited till the Day of Judgment. Everyone, except for the Shi`ah (Shiites), agree on this issue, which almost enjoy consensus of scholars. The following are just a few:

1- Abu `Ubayd said: "Today Muslims are unanimous that Mut`ah marriage has been Mansukh (abrogated) with Tahrim (prohibition); the Qur'an and Sunnah (whatever is reported from the Prophet) abrogated it. This is the view of all the scholars of the people of Hijaz, the Levant and Iraq, both As-hab-ul-Ra'y (scholars, especially the Hanafys, who exercised personal reasoning to reach judgments in the absence of clear texts) and As-hab-ul-Athar (scholars who depend on reports from the Prophet and his Companions), and no Rukhsah (concession) has been issued to anyone whether he is in dire need of this or to anybody else."

2: Imam Abu Ja`far Ahmad ibn Muhammad ibn Isma`il, known as Abu Ja`far Al-Nahhas stated in his book Al-Nasikh wa al-Mansukh fi al-Qur'an (The Abrogating and the Abrogated Texts in the Qur'an): "The unanimous view is that Mut`ah is Haram (prohibited) according to the Book of Allah (Exalted be He), the Sunnah of the Messenger of Allah (peace be upon him), the reports of the Rightly-Guided Caliphs, and `Aly Ibn Abu Talib (may Allah be pleased with him) who reproached Ibn Abbas from allowing it, saying: 'You are a stray man, ﴾the Prophet (peace be upon him) has forbidden Mut`ah marriage.'﴿ He continued to say: "There is no difference among the scholars about the authenticity of the Sanad (chain of narrators) narrated by `Aly Ibn Abu Talib (may Allah be pleased with him), his way, and his report he narrated that the Messenger of Allah (peace be upon him) prohibited Mut`ah." We will mention this with its chain of narrators when discussing the matter. Then he said: "He read that Ahmad Ibn Muhammad Al-Azdy narrated that Ibrahim Ibn Dawud said that `Abdullah Ibn Muhammad Ibn Asma' said that Juwayriyyah informed them that Malik Ibn Anas narrated that Al-Zuhry said that Abdullah Bin Muhammad ibn `Aly ibn Abu Talib (may Allah be pleased with him), and Al-Husayn ibn Muhammad reported that their father heard that `Aly Ibn Abu Talib (may Allah be pleased with him) said to Ibn `Abbas: "You are a stray man" ﴾the Messenger of Allah (peace be upon him)

forbade Mut`ah.﴿ Abu Ja`far said: "This Hadith has chains of narrators of which we chose this, due to its authenticity and the respectable status of Juwayriyyah, and because Ibn `Abbas when he was confronted by `Aly (may Allah be pleased with him) about this matter, did not argue, and therefore,

the prohibition of Mut`ah was unanimous; because those who permit it depend on Ibn `Abbas."

3- Al-Tahawy said in his book Sharh Ma`any al-Aathar, vol. 3, p. 27, that `Umar Ibn Al-Khattab (may Allah be pleased with him) forbade Mut`ah marriage, adding: "`Umar (may Allah be pleased with him) forbade Mut`ah marriage in the presence of the Sahabah (Companions) of the Messenger of Allah (peace be upon him) and none of them rejected this or claimed it to be Munkar (that which is unacceptable or disapproved of by Shari`ah and Muslims of sound intellect), and this is evidence that they followed him in what he forbade, and their consensus on this prohibition is evidence of its Naskh (abrogation)."

4- Al-Baghwy said in his book Sharh al-Sunnah, p. 100: "The scholars agreed on the prohibition of Mut`ah marriage, and it is like Ijma` (consensus of scholars). It was reported that Ibn `Abbas had given permission to whoever was in bad need of it because of the long stay abroad, and then he backtracked on his opinion after he was informed of this prohibition."

5- Al-Hafizh Abu Bakr Muhammad ibn Musa Al Hazimy said in his book Al-Nasikh wa al-Mansukh min Al-Aathar, p. 138, narrated on the authority of Al-Shafi`y that he said that Sufyan informed us that Isma`il ibn Abu Khalid narrated from Qays ibn Abu Hazim said: "I heard Ibn Mas`ud saying: ﴾We were in a battle with the Messenger of Allah (peace be upon him) and we had no women with us. Shall we

get ourselves castrated? But the Messenger of Allah (peace be upon him) forbade us from doing so, and then allowed us to marry women with a temporary contract (Mut`ah).﴿ He said after he reported it that this is Hasan Sahih (a Hadith whose Sanad contains a narrator with weak exactitude, but is free from eccentricity or blemish.), and this ruling was lawfully permitted in the early Islamic period. The Prophet (peace be upon him) permitted it for them for the reason which was mentioned by Ibn Mas`ud. This was the case when they were traveling, but it was never mentioned that the Prophet (peace be upon him) permitted it while they were residing in their own homes, and for this reason the Prophet (peace be upon him) forbade them from doing this more than once, and permitted them to do this at different times, until he prohibited them from doing this toward the end of his days (peace be upon him) during his farewell Hajj (pilgrimage). This prohibition was permanent, not temporary. There is no dispute on this matter among the scholars of Fiqh (Islamic jurisprudence) and the Imams of the Ummah (nation), except by some of the Shi`ah (Shiites) as well as reports by Ibn Jurayj who believed it was permissible."

6- Imam Muhammad Ibn `Aly Al-Shawkany said in his book Al-Sayl al-Jarrar Al-Mutadafiq `Ala Hada'iq Al-Azhar: "Be informed that marriage sanctioned by the Shari`ah (Islamic law) is that which is concluded by the Waliy (a legally accountable person acting for a woman regarding marriage) for the women. The Shari`ah stresses this condition that it renders the marriage, which is concluded without a Waliy, as Batil (null/void) and (the Prophet) repeated this three times. Therefore the marriage sanctioned by the Shari`ah

is that which necessitates the testimony of witnesses. This is confirmed in Prophetic Hadith. The (legal) marriage is that which leads to inheritance, confirms linage, and can result in divorce and `Iddah (woman's prescribed waiting period after divorce or widowhood). Knowing this, Mut`ah marriage is unlawful. It was permitted for those in travel if they were in dire need of it. There is no doubt about that. There is also no doubt about the Hadith which prohibits it until the Day of Judgment. No argument or opposition should arise after this elaboration. Some may argue that some the Sahabah (Prophet's Companions) did Mut`ah marriage after the death of the Prophet (peace be upon him), but this was not Bid`ah (rejected innovation in religion), because the ruling of its

prohibition was unknown to some of them. That is why 'Umar stated it is prohibited and linked it to the prohibition of the Prophet (peace be upon him) when he was informed that some of the Companions concluded Mut`ah marriage. This argument should be based on what was said by the Prophet (peace be upon him), not the action of one or more of the Companions. The argument that the permission is permanent and the prohibition is temporary is unacceptable, because abrogation is for what is what is permanent not what was done in the past. It is insensible to say that abrogation was meant for what had been done or that it is no more valid. All Muslims, except the Shiites, have agreed on the prohibition of Mut`ah marriage. In fact, the Shiite arguments need not to be rejected nor they can affect the consensus of Muslim scholars, because they mostly oppose the Qur'an, the Sunnah and the consensus of the Muslim scholars. Ibn Al-Mundhir said:

"The scholars are consensus that it is prohibited, except the Shiites." Ibn Battal said: "They are now consensus that whenever it, i.e. Mut`ah marriage, occurs it is null and void, whether before or after consummation." Al-Khattaby said: "The prohibition of Mut`ah marriage is unanimous, except among some of the Shiites." .

There are many accounts of the scholars that reported this consensus (on the prohibition of Mut`ah marriage), except for the Shiites, or near consensus. After this detailed discussion, we find that those who agree on Mut`ah marriage have made some points that must be refuted and answered, and therefore we did. May Allah grant us success.

158 - Those who permitted Mut`ah marriage built their opinion on the following:

1- Allah's (Exalted be He) Saying: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ This is because some of the Salaf (righteous predecessors) were reported to have explained the Ayah (Qur'anic verse) as referring to Mut`ah marriage (temporary marriage for a stipulated period). Moreover, a group of them recited the Ayah as: "so with those of whom you have enjoyed sexual relations for a fixed period".

2- The discrepancy between the reports that illustrated the first time Mut`ah marriage was prohibited, where it was recorded by Imam Muslim in the narration of Salamah ibn Al-Akwa` that it was permissible during the battle of

Awtas, whereas according to the narration of Sabrah it was permitted and then banned on the day of the Liberation of Makkah. According to a Hadith narrated by `Aly, Imam Muslim recorded that it was banned during the battle of Khaybar that was before the day of the Liberation of Makkah. It was recorded by Hadith compilers other than Muslim, from the narration of Ishaq ibn Rashid, on the authority of Al-Zuhry, on the authority of `Abdullah ibn Muhammad ibn `Aly on the authority of his father that `Aly said: ﴾The Prophet (peace be upon him) forbade it during the battle of Tabuk. ﴿ Abu Dawud also recorded a narration on the authority of Al-Rabi` ibn Sabrah from his father that it was forbidden at the time of the Farewell Pilgrimage. It was stated by Abu Dawud: "This is the most Sahih (authentic) narration in this regard." It was also narrated from Sabrah: ﴾The Prophet (peace be upon him) made it lawful during the Farewell Pilgrimage, and then he made it unlawful until the Day of Resurrection.﴿ It was recorded that Al-Hasan Al-Basry stated: "It was only permitted on `Umrat-ul-Qada' (`Umrah performed instead of the `Umrah the Prophet was prevented from completing)." Those sticking to these discrepancies argued that this discrepancy refutes all the Mut`ah marriage prohibition narrations, noting that for this reason they say it is still lawful.

3- The Athar (narrations from the Companions) reported by Hammam on the authority of Qatadah on the authority of Abu Nadrah on the authority of Jabir ibn `Abdullah (may Allah be pleased with them both) that `Umar ibn Al-Khattab (may Allah be pleased with him) said regarding Mut`ah marriage and Tamattu` Hajj (combining Hajj and `Umrah with a break in between): (There were two types of Mut`ah during the lifetime of the Messenger of Allah, I ban them and shall punish anyone who does them, one is Mut`ah with women and the other is Mut`ah of Hajj.) And what was recorded by Muslim in his Sahih that Jabir ibn `Abdullah said: (Mut`ah would be performed by a handful of dates and flour in the lifetime of Allah's Messenger (peace be upon him) and Abu Bakr until it was stopped by `Umar following the case of `Amr ibn Hurayth.) Those upholding those two narrations said: "They both prove that it was `Umar who prohibited Mut`ah marriage."

4- It was authentically reported that Ibn `Abbas (may Allah be pleased with them both) permitted Mut`ah marriage unrestrictedly in some narrations and restricting it to necessity in other narrations.

5- The narration recorded in the Two Sahih (authentic) Books of Hadith (i.e., Al-Bukhari and Muslim) on the authority of `Abdullah ibn Mas`ud (may Allah be pleased with him) who said: (We used to participate in the battles led by Allah's Messenger (peace be upon him) and we had nothing (no wives) with us. So we said, "Shall we get ourselves castrated?" He forbade us (to castrate ourselves) and then allowed us to marry women with a temporary contract (Mut`ah) and `Abdullah then recited to us: (O you who believe! Make not unlawful the Tayyibât (all that is good as regards foods, things, deeds, beliefs, persons) which Allâh has made lawful to you, and transgress not. Verily, Allâh does not like the transgressors.))

6- It was stated by Ibn Hazm in his book Al-Muhalla and then was reported from him by Al-Hafizh ibn Hajar in (chapter 9) page 174 of his book Fath Al-Bary, where he stated: "Among the numerous Companions and their disciples who believed in practising Mut`ah after the demise of the Messenger of Allah (peace be upon him) are: Ibn Mas`ud, Mu`awiyah, Abu Sa`id, Ibn `Abbas, Salamah and Mi`bid, the two sons of Umayiah ibn Khalaf, Jabir, and `Amr ibn Hurayth. It was reported by Jabir that it was observed by all the Companions in the lifetime of Allah's Messenger, Abu Bakr and `Umar, until shortly before the end of the caliphate of `Umar." He then added: "Of the Tabi`un (Followers, the generation after the Companions of the Prophet) we find Tawus, Sa`id ibn Jubayr, `Atta' and all the Fuqaha' (Muslim jurists) of Makkah." This is the text stated by Al-Hafizh ibn Hajar in his book Fath Al-Bary. Moreover, after checking Al-Muhalla we found that Ibn Hazm mentioned Asma' bint Abu Bakr among those Companions claimed by Ibn Hazm to believe in practising Mut`ah after the demise of the Messenger of Allah (peace be upon him). He also stated that there is another narration on the authority of `Umar ibn Al-Khattab (may Allah be pleased with him) that he only deemed Mut`ah marriage to be prohibited if it was not witnessed by two just men, and he deemed it permissible if there are two just witnesses to it.

7- It was attributed to `Ata', Ibn Jurayj, Malik ibn Anas, Al-Shafi`y, Ahmad, and Ibn Jarir that they deemed Mut`ah marriage permissible. It was stated in Al-Muntaqa Sharh al-Muwatta' that `Ata' opined that it was permissible. It was also stated by Al-Khattaby: "It is reported that Ibn Jurayj deemed it permissible." Some Hanafy scholars reported that Malik deemed it permissible. Some scholars tried to report a narration from Al-Shafi`y to hold the same opinion as Ibn `Abbas in this regard. A narration was reported from Imam

Ahmad ibn Hanbal that apparently deems it Makruh (reprehensible) without deeming it prohibited. Being asked by Ibn Mansur about Mut`ah marriage, Imam Malik stated: "As for me, avoiding it is preferable." It was recorded in Nayl Al-Awtar by Al-Shawkany: "It is reported that Imam Ibn Jarir deemed it (Mut`ah marriage) permissible.

159- Thus, we find ourselves committed to resolve all these matters in addition to defining what is meant by "Mut`ah" and whether committing it after declaring its prohibition entails Had (ordained punishment for violating Allah's Law). Following is our opinion and may Allah grant us all success.

With regard to quoting Allah's (Exalted be He) Saying : ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ to infer the permissibility of Mut`ah marriage (temporary marriage for a stipulated period), this was refuted by means of several matters:

1- First: What was stated by Shaykhul-Islam Ibn Taymiyyah in the second section of his book "Minhaj as-Sunnah Nabawiyyah" page 155 and 156: "As for Mut`ah about which there is discrepancy, there is no clear text in the previous Ayah (Qur'anic verse) that states its permissibility. Allah (Exalted be He) said: ﴾All others are lawful, provided you seek (them in marriage) with Mahr (bridal-money given by the husband to his wife at the time of marriage) from your property, desiring chastity, not committing illegal sexual intercourse, so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed; but if after a Mahr is prescribed, you agree mutually (to give more), there is no sin on you. Surely, Allâh is Ever All-Knowing, All-Wise.﴿ ﴾And whoever of you have not the means wherewith to wed free, believing women﴿ Thus, His Saying:

(Part No. 20; Page No. 301)

﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ implies any wife whose marriage has been consummated but those wives whose marriages have not been consummated, they deserve only half the Mahr (mandatory gift to a bride from her groom). This is stated in His (Exalted be He) Saying: ﴾And how could you take it (back) while you have gone in unto each other, and they have taken from you a firm and strong covenant?﴿ Allah (Exalted be He) judged that consummating marriage together with a marriage contract make it obligatory for the husband to pay the Mahr (mandatory gift to a bride from her groom). This proves that it is meaningless to assign a Mahr to be paid in Mut`ah (temporary) marriage without its being a permanent marriage. Rather, giving the Mahr in full in the permanent marriage is worthier. Accordingly, the Ayah must be referring to the permanent marriage either specifically or in general. The evidence of this is that following this Ayah Allah (Exalted be He) mentioned the marriage of slave-girls. Thus, it should be known that what has been stated has to do with the marriage of free women. Then he added: If it is claimed that Mut`ah is stated in the recitation of some of the Salaf (righteous predecessors): "so with those of whom you have enjoyed sexual relations for a fixed period," this can be refuted as follows: **First:** This is not

(Part No. 20; Page No. 302)

a Mutawatir recitation (a recitation reported by a significant number of narrators whose agreement upon a lie is impossible). The utmost that can be said is that it can be considered as Hadith-ul-Ahad (a Hadith which at some point in the chain has only a single narrator). However we acknowledge that Mut`ah was permissible at the beginning of Islam, yet the question here is whether Qur'an proves this or not.

Second: It should be said: If this recitation was revealed, there is no doubt that it is not stated as a famous recitation, which means that it is abrogated and that this recitation was when Mut`ah was permissible but when Mut`ah was prohibited this recitation was also abrogated; or it may be that the command to give them their Mahr refers to a legal unconditioned marriage. The most that can be said is that they are two recitations that are right and that it is obligatory to give Mahr in Mut`ah for a predetermined time provided that it is lawful. This was in the early days of Islam. Yet, there is nothing in the Ayah that indicates that Mut`ah for a predetermined period is lawful, since Allah (Exalted be He) did not say: It is lawful for you to practice Mut`ah with women for a predetermined period. Rather, He (Exalted be He) says: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿

(Part No. 20; Page No. 303)

This deals with the Mut`ah that already happened, whether it was a lawful or a doubtful marriage. Therefore, it is obligatory to pay Mahr (dowry) in an invalid marriage according to the Sunnah and consensus. The person who believed in the lawfulness of Mut`ah and practiced it should pay Mahr (dowry). Yet, the Ayah did not mention the forbidden Mut`ah i.e. if one practices sexual intercourse with a woman without a marriage contract, this is Zina (premarital sexual intercourse and/or adultery) if she is not forced, but if she is coerced, then this is a matter of disagreement among scholars.

This argument with which Shaykhul-Islam Ibn Taymiyyah proved here that the Ayah: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ did not indicate the lawfulness of Mut`ah, was reported by Imam Abu Ja`far ibn Jarir Al-Tabary in his book of Tafsir "Jami` Al-Bayan `an Ta'wil Al-Qur'an" on the authority of Ibn `Abbas, Al-Hasan, Mujahid and Ibn Zayd. He affirmed that this is the correct opinion.

It was stated by Ibn Jarir: I was told by Al-Muthanna: We were told by `Abdullah ibn Salih: We were told by Mu`awiyah ibn Salih on the authority of `Aly ibn Abu Talhah on the authority of Ibn `Abbas who interpreted Allah's (Exalted be He) Saying: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ to mean: If a man among you marries a woman and then has sexual intercourse with her just one time, then all the Mahr (mandatory gift to a bride from her groom) becomes her right. Having sexual intercourse refers to marriage which is illustrated in Allah's (Exalted be He) Saying: ﴾And give to the women (whom you marry) their Mahr (obligatory bridal-money given by the husband to his wife at the time of marriage) with a good heart﴿ We were told by Al-Hasan ibn Yahya saying we were told by `Abdul-Razzaq, by Ma`mar on the authority of Al-Hasan who interpreted Allah's (Exalted be He) Saying: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ to mean marriage.

We were told by Al-Qasim, by Al-Husayn: I was told by Hajjaj

(Part No. 20; Page No. 304)

on the authority of Ibn Jurayj on the authority of Mujahid who interpreted Allah's (Exalted be He) Saying: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ to mean marriage.

I was told by Yunus saying: we were told by Ibn Wahb who said: Ibn Zayd interpreted Allah's (may He be Exaletd) Saying: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ to mean: This refers to marriage. The only type stated in the Noble Qur'an is marriage. Thus, if after holding the marriage contract you took your wife and had sexual intercourse with her, then give her the Mahr (mandatory gift to a bride from her groom) that is her right. Yet if

she, of her own good accord, remit any part of it to you, take it, and enjoy it without fear of any harm as Allah (Exalted be He) has made it lawful. Allah (Exalted be He) made it obligatory for her to observe `Iddah (woman's prescribed waiting period after divorce or widowhood) and prescribed for her a share in inheritance. He then added: Allah's words, "so with those of whom you have enjoyed sexual relations" here refer to having sexual intercourse in consummation of marriage. Then, Imam (leader) Ibn Jarir mentioned the opinion stating that what is meant in the Ayah is Mut`ah, where he commented saying: The correct interpretation of the Ayah is that of those who explained it to mean those women you have married and consummated marriage with, then give them their Mahr. This is based on the fact that it was proven that Allah (Exalted be He) forbade Mut`ah with women outside either the legal marriage or the slave-girls one possesses, on the tongue of Allah's Messenger (peace be upon him). Then it was stated by Imam (leader) Ibn Jarir: We were told by Ibn Waki`, and by my father on the authority of `Abdul-`Aziz ibn `Umar ibn `Abdul-`Aziz and by Al-Rabi` ibn Sabrah Al-Juhany on the authority of his father that the Prophet (peace be upon him) said: ﴾enjoy women in marriage.﴿ Enjoyment according to us at the time meant marriage.

(Part No. 20; Page No. 305)

We have proven that Mut`ah outside legal marriage is unlawful in several other places in our books so that there is no need to repeat this. Imam (leader) Ibn Jarir then added to this the narration reported from Ubay ibn Ka`b and Ibn `Abbas (may Allah be pleased with them both) with regard to their recitation: "so with those of whom you have enjoyed sexual relations for a fixed period," where he commented on this saying: As for the narration reported from Ubay ibn Ka`b and Ibn `Abbas with regard to their recitation: "so with those of whom you have enjoyed sexual relations for a fixed period," this recitation contradicts what was recorded in the Mus-haf (Qur'an, the Book). It is not permissible for anyone to attach to Allah's Book anything that is not substantiated by a decisive narration from the Prophet (peace be upon him) whose opposition is not permissible.

Imam (leader) Ibn Jarir also mentioned among what was stated by Mufassirs (exegetes of the Qur'an) with regard to Allah's

(Part No. 20; Page No. 306)

(Exalted be He) Saying: ﴾but if after a Mahr is prescribed, you agree mutually (to give more), there is no sin on you.﴿ the interpretation of Al-Suddy who stated that it means: There is no blame on you, O

people, to have mutual agreement between you and the women with whom you had sexual intercourse based on a Mut`ah contract for a predetermined period after the period has terminated and separation has become due, then there is no blame if they should extend the term and you increase the Mahr they conditioned before their wombs become purified after one menstruation. Then Imam (leader) Ibn Jarir commented on this, saying: "As for what has been stated by Al-Suddy, this is meaningless since it is an invalid opinion to deem permissible to have sexual intercourse with a woman outside marriage or without being a slave-girl possessed by the man in question. Imam Ibn Jarir chose the interpretation of those who explained the Ayah to mean: There is no blame on you, O people, with regard to having mutual agreement with your wives after giving them their Mahr based on the marriage that took place between you and them to decrease, be exempted of, postpone, or pay the requirement you owe them [of the Mahr. Ed.]. Then he said: This is similar to His (Exalted be He) other Saying: ﴾And give to the women (whom you marry) their Mahr (obligatory bridal-money given by the husband to his wife at the time of marriage) with a good heart; but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allâh has made it lawful).﴿

Among the outstanding Mufassirs (exegetes of the Qur'an) who supported the viewpoint that the Ayah: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ does not indicate the lawfulness of Mut`ah with women are: Abu Ja`far Al-Nahhas, Abu Bakr Al-Jassas, Ibn Khuwayz Mindad, Ibn Al-`Araby and Ibn Al-Jawzy. The following is what they have said: Abu Ja`far Al-Nahhas said in his book "Al-Nasikh wal-Mansukh (abrogating and abrogated texts)", pp. 105-

106: "Some people said, i.e. commenting on the mentioned Ayah: This (i.e. having sexual intercourse) refers to the very marriage. Allah (Exalted be He) never permitted Mut`ah in His Book. Among the scholars who adopted this viewpoint are: Al-Hasan and Mujahid. We were also told by Ahmad ibn Muhammad Al-Azdy who said: Ibn Abu Mariyam told us that Al-Firiyaby said on the authority of Warqa' on the authority of Abu Nujaih that Mujahid said: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ refers to marriage. We were also told by Ahmad Ibn Muhammad Ibn Nafi`, by Salamah by `Abdul-Razzaq by Ma`mar that Al-Hasan said : ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ refers to marriage. It was said by Abu Ja`far: "The same opinion was reported from Ibn `Abbas. We will mention it along with its Isnad (chain of narration) and explanation." Abu Ja`far fulfilled this promise on pp. 106-107, where he said: We were told by Bakr ibn Sahl by `Abdullah ibn Salih by Mu`awiyah ibn Salih on the authority of `Aly ibn Abu Talhah that Ibn `Abbas said: Allah's (Exalted be He) Saying: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ means: If a man marries a woman and then has sexual intercourse with her just one time, then all Mahr (mandatory gift to a bride from her groom) becomes her right. Having sexual intercourse refers to marriage which is illustrated in Allah's (Exalted be He) Saying: ﴾And give to the women (whom you marry) their Mahr (obligatory bridal-money given by the husband to his wife at the time of marriage) with a good heart﴿ It was said by Abu Ja`far: Thus, it was made clear in the best way by Ibn `Abbas that Mut`ah refers to marriage. The right interpretation of the Ayah is that with regard to your wives with whom you had sexual intercourse one or more times after a legal marriage contract, give them the Mahr in full unless they offer it or some of it as a gift.

The Ayah was also interpreted to mean: Once you have enjoyed sexual relations through

consummating marriage with a wife, the whole Mahr becomes her right but if the marriage was not consummated, then she deserves half the Mahr. Abu Ja`far said: Al-Rabi` ibn Sabrah narrated on the authority of his father ﴾that the Prophet (peace be upon him) prohibited Mut`ah marriage (temporary marriage for a stipulated period) with women on the Day of the Opening (of Makkah).﴿

We have proved through both the Qur'an and the Sunnah that Mut`ah is unlawful. The claim that Mut`ah was permitted in the Book was refuted through the interpretation we have mentioned to have said: Mut`ah (in the Ayah) refers to marriage. As for the Sunnah, Al-Rabi` ibn Sabrah narrated on the authority of his father that Allah's Messenger (peace be upon him) said: ﴾enjoy women in marriage.﴿ He said: Enjoyment according to us at the time meant marriage.

It was said by Abu Bakr Al-Jassas in the chapter he wrote on Mut`ah with women in his book "Ahkam Al-Qur'an (Rules of the Qur'an)" vol. 2, pp 148 - 149: The content of the Ayah i.e. Allah's (Exalted be He) Saying: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ refers to the fact that what is meant is marriage, not Mut`ah. This is based on three following arguments:

First: It is a conjunction to permitting marriage in Allah's (Exalted be He) Saying: ﴾All others are lawful﴿ Undoubtedly, this refers to the permissibility of marrying any woman other than the Mahrams (unmarriageable relatives). Since there is agreement among scholars that what is meant by that is marriage, thus, mentioning the term Mut`ah (practicing sexual intercourse) here must be understood as referring to the ruling of the wife with whom one has consummated marriage after a legal marriage contract, where she deserves the whole Mahr.

Second: Allah's (Exalted be He) Saying: ﴾desiring chastity﴿ where desiring chastity can only be achieved in a valid legal marriage. This is because a person who has sexual intercourse based on Mut`ah cannot be desiring chastity nor

can this name apply to him. Thus, we inferred that (by this term) Allah (Exalted be He) wanted marriage.

Third: Allah's (Exalted be He) Saying: ﴾not committing illegal sexual intercourse﴿ Thus, Allah (Exalted be He) named Zina (premarital sexual intercourse and/or adultery) illegal sexual intercourse because it lacks the rulings of marriage i.e. the obligation of attributing children to their parents, the obligation of the wife to observe `Iddah, and the permissibility to have sexual intercourse unless the marriage has ended. Since Mut`ah also lacks these rulings, it has the same ruling as Zina. It is most likely that the scholars who named Mut`ah illegal sexual intercourse built their opinion on the analogy that since a fornicator is defined as a person who has illegal sexual intercourse because the only ruling that applies to him due to having sexual intercourse is that he has ejaculated in an illicit way without the children being attributed to him. Thus, Allah (Exalted be He) prohibits this which was permitted in Mut`ah and only permitted desiring chastity. Accordingly, illegal sexual intercourse cannot refer to consummating marriage through having sexual intercourse with one's wife. Rather, it refers to Mut`ah if it has the same conditions as illegal sexual intercourse. On the other hand, desiring chastity refers to marriage. Allah's (Exalted be He) Saying: ﴾not committing illegal sexual intercourse﴿ is a condition for permissibility, which stands as proof for prohibiting Mut`ah if it has the same conditions as illegal sexual intercourse as we have mentioned.

Al-Jassas also refuted the recitation attributed to Ubay, which reads: "... for a fixed period," that it is not permissible for any Muslim to deem this recitation authenticated. This is because this recitation was not authentically reported from the Prophet (peace be upon him). Even if the Ayah contained "... for a fixed period," this would not have indicated Mut`ah with women. This is because the "fixed period" might be a determiner for the Mahr, which means that the Ayah should mean: Thus, with

regard to the Mahr you promised to give to your wives after a certain period after consummating marriage with them, give it to them when it becomes due.

(Part No. 20; Page No. 310)

Ibn Khuwayz Mindad Al-Maliky said: " It is not permissible that the Ayah: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ should be interpreted as referring to permitting Mut`ah with women. This is because Allah's Messenger (peace be upon him) forbade Muslims from Mut`ah and prohibited it; and because Allah (Exalted be He) says: ﴾Wed them with the permission of their own folk (guardians, Auliyâ' or masters)﴿ It is well-known that marrying women with the permission of their people is the legal marriage that stipulates the presence of a guardian and two witnesses, which is not the case with Mut`ah." This was reported from Ibn Khuwayz Mindad and Imam Abu `Abdullah Muhammad ibn Ahmad Al-Ansary Al-Qurtuby in the book titled "Al-Jami` Li-Ahkam Al-Qur'an" pp. 129 - 130.

The judge, Abu Bakr ibn Al-`Araby also said in his book entitled "Ahkam Al-Qur'an (the rulings of the Qur'an)": The Ayah i.e. Allah's (Exalted be He) Saying: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ has two interpretations:

First: That Allah (Exalted be He) meant having sexual intercourse within the frame of marriage. This was the viewpoint stated by a group including: Al-Hasan, Mujahid, and one of the narrations of Ibn `Abbas

Second: That it refers to Mut`ah with women i.e. through having sexual intercourse with them for a fixed period. It was reported that Ibn `Abbas was once asked about Mut`ah with women, where he recited: "so with those of whom you have enjoyed sexual relations for a fixed period," where Ibn `Abbas swore: "By Allah, Allah revealed this as I have stated." It was also reported from Habib ibn Thabit that he said: I was given a Mus-haf (Qur'an, the Book) by Ibn `Abbas who said: This is the recitation of Ubay, where it contained the Ayah as was stated by Ibn `Abbas i.e. to a fixed period. Yet, this was not authentically reported from them. Thus, pay no attention to it. Allah's (Exalted be He) Saying: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ means a valid legal marriage.

(Part No. 20; Page No. 311)

It was stated by Ibn Al-Juzy in his book "Zad al-Masir fi `Ulum al-Tafsir" vol. 2 pp. 53 - 54 printed by Al-Maktab Al-Islami: " Some reciters of the Noble Qur'an burdened themselves to say: What is meant in this Ayah is Mut`ah with women but then it was abrogated by what was reported from the Prophet (peace be upon him) that he prohibited Mut`ah. Yet, this is a needless affectation since the Prophet (peace be upon him) allowed Mut`ah with women but then prohibited it. Thus, his (first) saying was abrogated by his second one. Yet, the Ayah did not imply permitting Mut`ah with women because in this Ayah Allah (Exalted be He) says: ﴾you seek (them in marriage) with Mahr (bridal-money given by the husband to his wife at the time of marriage) from your property, desiring chastity, not committing illegal sexual intercourse﴿ Thus, it refers to a valid legal marriage. It was said by Al-Zajjaj: His Saying: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ means with those women with whom you have had sexual intercourse according to the previous condition i.e. Allah's (Exalted be He) Saying: ﴾desiring chastity, not committing illegal sexual intercourse﴿ i.e. after marrying them: ﴾give them their Mahr as prescribed﴿ i.e. their Mahr. Whoever interprets the Ayah other than that is mistaken and ignores the nature of the Arabic language."

Based on what we have illustrated, it should be clear that what was reported by Al-Qurtuby in his

book "Al-Jami` Li-Ahkam Al-Qur'an" from Abu Bakr Al-Tartoushy i.e. he stated after mentioning those who deemed Mut`ah with women permissible: "All the scholars and Fuqaha' (Muslim jurists) of the Companions, Tabi`un (Followers, the generation after the Companions of the Prophet), and Salaf (righteous predecessors) are of the opinion that this Ayah: (so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed) was abrogated and that Mut`ah with women is unlawful" and is not to be taken for granted with regard to the meaning of the Ayah.

The second: The following is some of the opinions of scholars refuting the opinion of those who inferred from Allah's saying:

(Part No. 20; Page No. 312)

﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ that Mut`ah marriage (temporary marriage for a stipulated period) is permissible. Shaykhul-Islam in section two of his book "Minhaj Al-Sunnah," commented on the previous statement: " Actually, Allah (Exalted be He) only permitted (for sexual intercourse) a wife and slave-girls one possesses in His Book. However, having sexual intercourse with a woman based on Mut`ah marriage is not included in the meaning. Had she been a wife, they would have inherited from each other; she would have been obliged to observe `Iddah (woman's prescribed waiting period after divorce or widowhood), and she would have been forbidden for him after the third divorce. These are the rulings of a wife stated in Allah's Book. In this type of marriage, women do not have these requisites of marriage, and this is why this type of marriage is nullified based on the ruling that the nullification of an entailment precludes the nullification of what is entailed. Allah (Exalted be He) only permitted marriage and the slave-girls one possesses in His Book and forbade any other form. Allah (Exalted be He) says: ﴾And those who guard their chastity (i.e. private parts, from illegal sexual acts)﴿ ﴾Except from their wives or (the slaves) that their right hands possess, - for then, they are free from blame;﴿ ﴾But whoever seeks beyond that, then those are the transgressors;﴿ After this prohibition, if a man marries a woman she can temporarily neither be regarded as a wife nor a slave-girl based on the text of the Qur'an. It is obvious that she is not a slave-girl. She is not a wife because she lacks the conditions of marriage i.e., its (marriage's) being a cause for mutual inheritance, the obligation that the wife should observe `Iddah after divorce or her husband's death, that they are unmarriageable after the third divorce, and that the wife has half the Mahr (mandatory gift to a bride from her groom) if she is divorced before the marriage is consummated, in addition to other entailments of marriage. He then added: "It may be argued that despite being a wife, she does not inherit if she belongs to the People of the Book or if she is a slave, and this can be refuted by saying that those who permit Mut'ah marriage do not permit marrying from the People of the Book and only permit marrying a slave girl in case of necessity. Nevertheless, they consider Mut`ah marriage permissible without restrictions. Moreover,

(Part No. 20; Page No. 313)

it can be argued that marrying a woman from the People of the Book or a female slave entails mutual inheritance but still there are two things that prohibit inheritance i.e. disbelief and slavery. An analogy is that even though kinship is a cause for deserving inheritance, yet if a relative is a slave or a disbeliever, inheritance is prevented. This is why once a son, for example, is emancipated or embraces Islam, he has the right to inherit his father. The same ruling applies to a wife i.e. if she embraces Islam or is emancipated during the lifetime of her husband and chooses to remain his wife. In this case, she has the right to inherit him according to Ijma` (consensus of scholars). On the other hand, this does not apply to a woman with whom one has entered into wedlock based on Mut`ah marriage, as marriage does not entail inheritance. The similitude of this type of marriage is like Zina

(premarital sexual intercourse and/or adultery), where the illegitimate child cannot be attributed to the man who committed the Zina, which means that the child does not belong to him who has the right to inherit him." He then added: "If it is claimed that some rulings apply to relationship and to marriage, then our reply is that this is an issue of disagreement among scholars, and the Jumhur (dominant majority of scholars) opine that all the rulings apply to relationship equally. Moreover, this is not an argument for them since none of the rulings pertaining to a wife apply to a woman with whom one has entered into wedlock based on Mut`ah marriage, about whom there is no text reported to prove any feature of a legal marriage. Thus, it should be known that she is not a wife. With regard to the proven rulings pertaining to this type of marriage, that acknowledge the child to be attributed to its parents, that the woman should be purified from menstruation before leaving her, that it stands for preventing executing Hudud (prescribed penalties) against the couple, that it entails offering Mahr, and so on, then we can say that this is proven to be a "doubtful marriage". Thus, it should be known that having sexual intercourse with a woman with whom one has entered into wedlock through Mut`ah marriage is by no means like that practiced with one's wife in a legal marriage. Rather, it is a "doubtful marriage" even in the sight of those who believe it is lawful. Its lawfulness is the cause of dispute, and this cannot be used as an argument by either of the disagreeing parties. Rather, the argument should be either a text or Ijma` (consensus of scholars)."

Abu Bakr Al-Jassas was one of the scholars preceding Shaykhul-Islam who held the same opinion as his Abu Bakr

Al-Jassass in his book Ahkam Al-Qur'an: (vol 2, page 149), where he stated: "The evidence that it was forbidden is His (Exalted be He) Saying: ﴾And those who guard their chastity (i.e. private parts, from illegal sexual acts)﴿ ﴾Except from their wives or (the slaves) that their right hands possess, - for then, they are free from blame;﴿ ﴾But whoever seeks beyond that, then those are the transgressors;﴿ Thus, Allah (Exalted be He) confined having sexual intercourse to either of these forms exclusively and excluded any other kind by His saying: ﴾But whoever seeks beyond that, then those are the transgressors;﴿ Since Mut`ah (temporary) marriage is not one of these two types, it is unlawful. If it is claimed: "You did not present proof that the woman with whom one has entered into wedlock based on Mut`ah marriage is not a wife, Mut`ah (temporary) marriage belongs to these two types that are exclusively permissible." In this case, we say to the person who holds this opinion: "This is wrong because a woman can only be given the name "wife" if her marriage is consummated based on a marriage contract. Since Mut`ah (temporary) marriage is not based on a marriage contract, the woman in this case cannot be considered a wife." If it is asked: "What is the evidence that Mut`ah (temporary) marriage is not a (legal) marriage?" We can say: "The evidence is that "marriage" is a name that refers to two meanings only: having sexual intercourse in consummation of marriage, and the marriage contract. We have previously illustrated that it is real in the first and figurative in the second. It should be known that the name (marriage) is confined to one of these two meanings and that giving it to "marriage contract" is figurative, as we have just mentioned. If we find that the Arabs gave this name (marriage) to a marriage contract even before the consummation of marriage and that they did not give it to Mut`ah marriage (that involves consummation), where the Arabs did not say such-and-such man married such-and-such woman if he conditioned to enter into wedlock with her based on Mut`ah marriage, then it is not correct to give the name "marriage" to Mut`ah. This is based on the fact that a figurative name can only be applied if it

is heard from the Arabs or stated by the Shari`ah. Since neither Shari`ah nor the Arabs named Mut`ah "marriage," then Mut`ah must not have been made lawful by Allah (Exalted be He) and that

the person who does it must be a transgressor and wronging himself by committing what Allah (Exalted be He) made unlawful. Moreover, marriage has certain conditions and failing to fulfill them renders it nullified. They include: Firstly, the passage of time does not affect the marriage contract i.e. it does not necessitate putting it to an end, which is not the case with Mut`ah. According to those who believe in its permissibility, it necessitates putting an end to marriage upon the termination of the agreed-upon period. Secondly, marriage entails attributing the child to its parents without resorting to prove this through courts. A baby born through marriage can only be denied through Li`an (allegation of adultery against a wife, accompanied by mutual invoking of Allah's Curse/Wrath if lying). On the contrary, those believing in the permissibility of Mut`ah do not attribute the child to its parents. Thus, it should be known that it is neither a marriage nor is its bed lawful. Thirdly, consummating marriage with one's wife entails that she should observe `Iddah (woman's prescribed waiting period after divorce or widowhood) upon separation, and that one's death makes it obligatory for one's wife to observe `Iddah, regardless of whether or not the marriage was consummated. Allah (Exalted be He) says: ﴾And those of you who die and leave wives behind them, they (the wives) shall wait (as regards their marriage) for four months and ten (days)﴿ On the contrary, Mut`ah does not make it obligatory for the woman to observe `Iddah upon the death of the man. Allah (Exalted be He) also says: ﴾In that which your wives leave, your share is a half﴿ There is no mutual inheritance in Mut`ah. These are the rulings pertaining to marriage unless there is slavery or Kufr (disbelief) that prevents mutual inheritance. There is no mutual inheritance in Mut`ah even when there is nothing that prevents it, such as slavery or Kufr (disbelief); since there is no cause that necessitates separation; and since there is nothing that prevents attributing the child to its parents, in spite of the fact that the man has sexual intercourse with her,

which necessitates attributing the child to him, then all this proves that it is not a marriage. Consequently, if it is neither a marriage nor a slave-girl that one possesses, so it is forbidden based on the Qur'anic text: ﴾But whoever seeks beyond that, then those are the transgressors;﴿ If it is claimed that the termination of the determined period after which a woman can marry due to the absence of her husband is what is meant by divorce, then this can be refuted as follows: Since divorce can only take place by means of a frank or figurative expression, which were not done by the husband, then how can this be considered a divorce? Even the previous statement of those who consider Mut`ah marriage permissible can also be refuted by saying that she should not be separated from him if the determined period after which a woman can marry due to the absence of her husband has passed while she is menstruating since those who believe that Mut`ah marriage is permissible, do not consider it permissible to divorce a woman during her menstruation. Accordingly, had the separation occurring due to the passage of the period been a divorce, it should not have occurred while the woman was menstruating. Since this is not the case with them, this proves that this is no divorce. On the other hand, if the woman in Mut`ah is separated without a divorce or any other cause on the part of the husband that necessitates separation, this proves that it is not a marriage. We have just stated that Mut`ah does not attribute the child to its parents, nullifies `Iddah, and abolishes the right of mutual inheritance. It might be claimed that lacking these rulings does prevent it from being marriage, since the marriage of a person under age is valid, the children of the marriage cannot be attributed to him; an even though a slave has no right in inheritance and even though it is not permissible for a Muslim to inherit a disbeliever, the absence of these rulings does not mean it is not a marriage. This claim can be refuted as follows: The children of a person under age who has the ability to have sexual intercourse with his wife are attributed to him. On the contrary, in Mut`ah marriage the children are not attributed to the man even though he had sexual intercourse that causes the children of a valid marriage to be attributed to him. Moreover, a slave and a disbeliever were deprived of inheriting because slavery and disbelief prevent mutual inheritance. Mut`ah lacks this. Marriage gives the spouses the right to inherit from each other. Thus,

if there is nothing that prevents them from inheriting from each other and yet they cannot inherit from each other in Mut`ah,

(Part No. 20; Page No. 317)

we should know that Mut`ah is not marriage. Had it been marriage, it would have entailed mutual inheritance because there is no impediment in either of the two parts."

Third: Some scholars refute the opinion of those who inferred from Allah's (Exalted be He) Saying: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ that it refers to the abrogation of Mut`ah marriage (temporary marriage for a stipulated period). The scholars who held this opinion affirmed that it was abrogated but then disagreed regarding what abrogated it, whether it is the Noble Qur'an or the Sunnah or both. This was illustrated by Imam Abu Ja`far Al-Nahhas in his book entitled "Al-Nasikh wal-Mansukh min al-Qur'an (The Abrogating and Abrogated Ayahs in the Qur`an), where he, after mentioning the viewpoints of scholars regarding the Ayah, said: "Some scholars stated that Mut`ah (with women) was lawful but then this was abrogated by Allah (Exalted be He) in the Noble Qur'an. Among those who held this opinion is Sa`id ibn Al-Musayyib while narrating from Ibn `Abbas and `A'ishah (may Allah be pleased with them both). The same opinion was held by Al-Qasim, Salim and `Urwah. I also heard Ahmad ibn Muhammad ibn Al-Hajjaj reading before me that Yahya ibn Sulayman said: We were told by `Aly ibn Hisham on the authority of `Uthman on the authority of `Ata' Al-Khurasany on the authority of his father that Ibn `Abbas said regarding Allah's (Exalted be He) Saying: ﴾so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴿ : It was abrogated by: ﴾ O Prophet (صلى الله عليه وسلم)! When you divorce women, divorce them at their 'Iddah (prescribed periods)﴿ He added: Divorce should be made while one's wife is purified and one has not had sexual intercourse with her during that time. I also heard Muhammad ibn Ja`far reading before me that

(Part No. 20; Page No. 318)

Yusuf ibn Musa said: We were told by Waki` on the authority of Sufyan on the authority of Dawud ibn Abu Hind that Sa`id ibn Al-Musayyib said: Mut`ah was abrogated by the Ayah of inheritance, i.e.: ﴾In that which your wives leave, your share is a half﴿ Abu Ja`far commented: This is because there is no inheritance in Mut`ah. This is why he inferred that it was abrogated because Mut`ah implies that a man says to a woman: I want to marry you just for one day or the like, but you do not need to observe `Iddah (woman's prescribed waiting period after divorce or widowhood). There is no mutual inheritance between them nor divorce nor a witness, which means that this is Zina (premarital sexual intercourse and/or adultery). This is why `Umar ibn Al-Khattab (may Allah be pleased with him) stated: "If any one is brought to me who practiced Mut`ah with women, I will stone him to death." I also heard Ahmad ibn Muhammad ibn Al-Hajjaj reading before me that Yahya ibn `Abdullah ibn Bakir said: We were told by Al-Layth on the authority of `Aqil that Ibn Shihab said: I was told by Salim ibn `Abdullah while teaching me: Those men over there adopt the permissibility of Mut`ah with women. Yet have you observed a marriage without divorce, observing `Iddah, and inheritance. He also added: I was told by Al-Qasim ibn Muhammad ibn Abu Bakr : How dare you to give a Fatwa permitting Mut`ah with women whereas Allah (Exalted be He) says: ﴾And those who guard their chastity (i.e. private parts, from illegal sexual acts)﴿ ﴾Except from their wives or (the slaves) that their right hands possess, - for then, they are free from blame;﴿ ﴾But whoever seeks beyond that, then those are the transgressors;﴿ Abu Ja`far said: This is a clear viewpoint based on the fact that if the woman in Mut`ah is separated without a divorce, and she should not observe `Iddah nor have a right in inheritance, then she is not a wife. Some scholars opined: What abrogated Mut`ah with women is the Hadith reported from Allah's Messenger (peace be upon him). I heard Ahmad ibn Muhammad Al-Azdy reading before me that Ibrahim ibn Abu Dawud said: We were told by `Abdullah

ibn Muhammad ibn Asma'

(Part No. 20; Page No. 319)

by Juwayriyyah on the authority of Malik ibn Anas on the authority of Al-Zuhry that `Abdullah ibn Muhammad ibn `Aly ibn Abu Talib (may Allah be pleased with him) and Al-Hasan ibn Muhammad told him that their father heard `Aly Ibn Abu Talib (may Allah be pleased with him) saying to Ibn `Abbas : "You are a person led astray; Allah's Messenger (peace be upon him) forbade us from practicing Mut`ah with women. Abu Ja`far said: The (above-mentioned) Hadith has several chains of transmission wherefrom we chose this due to its authenticity, the high status of Juwayriyyah that narrated it from Asma', and because when Ibn `Abbas was addressed with this by 'Aly (may Allah be pleased with him), he did not argue with him. Accordingly, prohibiting Mut`ah is based on Ijma` (consensus of scholars) because those who deem it permissible depend on Ibn `Abbas. Some scholars stated that Mut`ah was abrogated by means of both the Noble Qur'an and the Sunnah. This is the viewpoint held by Abu `Ubayd.

It was related by Al-Rabi` Ibn Sabrah from his father ﴾that the Prophet (peace be upon him) prohibited temporary marriage with women on the Day of the Conquest of Makkah.﴿ Prohibiting it was authentically proven from the Book and the Sunnah .

Concerning the positions of eminent scholars regarding the inconsistency of the narrations regarding the time at which Mut`ah with women was prohibited, there is Ijma` (consensus of scholars) among scholars that this difference among the narrations does not stand for a blemish against their authenticity. They also agreed that they should be ignored and that Mut`ah should continue to be considered permissible. The claim that the inconsistency of the narrations regarding the time at which Mut`ah was prohibited stands for a blemish against their authenticity, that they should be ignored and that Mut`ah should continue to be deemed permissible based on the original legislation, was refuted with the following:

(Part No. 20; Page No. 320)

1- Al-Qady `Iyad commented in his book entitled "Sharh Sahih Muslim" on these narrations: "It was mentioned by Muslim on the authority of Salamah ibn Al-Akwa` that Mut`ah was permitted on the day of Awtas; and from the narration of Sabrah that it was permitted on the day of the Liberation of Makkah. Yet both battles took place simultaneously. Then, it was prohibited at that time. The Hadith reported by `Aly states that it was prohibited on the day of the Battle of Khaybar which took place before the day of the Liberation of Makkah. Hadith compilers other than Muslim reported from `Aly that the Prophet (peace be upon him) forbade it at the Battle of Tabuk. This narration was reported from Ishaq ibn Rashid on the authority of Al-Zuhry on the authority of `Abdullah ibn Muhammad ibn `Aly on the authority of his father from `Aly. Yet none other than him mentioned this narration, which means that this is a mistake he made. This hadith was narrated by Malik in his book "Al-Muwatta'" as well as Sufiyan ibn `Uyaynah, Al-`Amriy , Yunus and others on the authority of Al-Zuhry wherein they mentioned the day of Khaybar. It was also narrated by Muslim on the authority of a group from Al-Zuhry, which is the Sahih (authentic) narration. It was also narrated by Abu Dawud in the Hadith narrated by Al-Rabi` ibn Sabrah on the authority of his father that it was forbidden on the Farewell Hajj. It was stated by Abu Dawud : This is the most authentic narration mentioned in this regard. It was also narrated by Sabrah that it was permitted on the Farewell Hajj and then the Prophet (peace be upon him) forbade it till the Last Day. It was reported from Al-Hasan Al-Basry that the only time it was permitted was during `Umrat-ul-Qada' (`Umrah performed instead of the `Umrah the Prophet (peace be upon him) was prevented from completing). This was also narrated from Sabrah Al-Juhany. The only times Muslim mentioned specific times in the narrations narrated by Sabrah were in the narration reported by Muhammad ibn Sa`id Al-Darimy, that of Ishaq ibn Ibrahim, and that of

Yahya ibn Yahya, wherein he mentioned the day of the Opening of Makkah. Some scholars said: Mentioning a narration that Mu`tah was permitted on the Farewell Hajj is not correct, since on that day

(Part No. 20; Page No. 321)

there was neither necessity entailing this nor was there celibacy among Muslims since most of them performed Hajj accompanied by their wives. Yet the correct opinion is that what happened during the Farewell Hajj was that the Prophet (peace be upon him) just forbade Muslims from Mut`ah as stated in more than one narration. Thus, the wisdom behind the Prophet (peace be upon him) prohibiting it again was to declare it while the Muslims were gathering, so that those who were witnessing might inform those who were not present, and to perfect religion and state Shari`ah as he (peace be upon him) stated everything and illustrated what is lawful and what is unlawful on that day and declared that Mut`ah was unlawful decisively on that day since he said: "... till the Last Day." Al-Qady said: "It is most likely that the narrations stating the prohibition of Mut`ah on the day of Khaybar, on `Umrat-ul-Qada' and the day of the Liberation of Makkah, and the day of Awtas are correct and that the Prophet (peace be upon him) determined the prohibition at these places. This is because the Hadith of its prohibition on the day of Khaybar is Sahih (authentic) and there is no blemish in it; rather, it is verified to be narrated by reliable Thiqahs (trustworthy) narrators. Yet it is stated in the narration by Sufyan that the Prophet (peace be upon him) forbade Mut`ah, and the meat of domestic donkeys on the Day of Khaybar. Thus, some scholars said that these are two separate clauses that mean the Prophet (peace be upon him) prohibited Mut`ah without the narrator stating the time it was prohibited, and then he added the other phrase "and the meat of domestic donkeys on the Day of Khaybar." Therefore, the Day of Khaybar must have been for prohibiting the domestic donkeys on particular but it did not clarify the time of prohibiting Mut`ah with women. In this way, we find that there is consistency between the narrations. Those who hold this viewpoint said: Thus, there is no doubt that prohibiting Mut`ah with women took place in Makkah while prohibiting domestic donkeys was in Khaybar. Commenting on this, Al-Qady said: This would have been a good interpretation had it been supported by all the other narrations reported by other than Sufyan. Al-Qady added: The correct opinion is what we have stated: That the Prophet (peace be upon him) stated that it was prohibited. Yet still there should be an explanation for what was mentioned regarding its permissibility on `Umrat-ul-Qada', the day of the Liberation of Makkah, and the Day of Awtas. It is probable that the Prophet (peace be upon him) permitted it for them

(Part No. 20; Page No. 322)

for a dire need after forbidding it and then he prohibited it forever. Accordingly, the Prophet (peace be upon him) must have prohibited it on the Day of Khaybar and on `Umrat-ul-Qada' and then permitted it on the day of the Liberation of Makkah for a dire need and then prohibited it forever on the day of the Liberation of Makkah. This makes the narration stating that it was permitted on the day

of the Farewell Hajj as false since it was narrated by Sabrah Al-Juhany. Yet the reliable authorities narrated that the Prophet (peace be upon him) permitted it on the day of the Opening of Makkah, and prohibited it on the Farewell Hajj. Thus, we only accept from the Hadith narrated by Sabrah Al-Juhany what was unanimously agreed upon by the majority of narrators and what was confirmed by other Companions (may Allah be pleased with them) i.e. the Companions were forbidden to do it on the day of the Liberation of Makkah, whereas it was absolutely prohibited on the day of the Farewell Hajj, so as to confirm and spread its prohibition far and wide as previously mentioned. The narration of Al-Hasan that it was only in `Umrat-ul-Qada', neither before nor after it, is refuted by the authentic hadiths stating its prohibition on the Day of Khaybar, its existence before `Umrat-ul-Qada', and what was stated regarding its permissibility on the day of the Opening of Makkah and the day of Awtas. However, the narration stating this was attributed to Sabrah Al-Juhany who is the narrator of the other narrations, yet it is authentic. Thus, the narration stating that "It was only in `Umrat-ul-Qada', neither before nor after it," must be ignored since it contradicts authentic narrations. Some scholars said: This is one of the matters that were prohihibited, permitted and abrogated twice. And Allah knows best!" This is the end of the words of Al-Qady `Iyad that were quoted by Al-Nawawy in the book entitled "Sharh Sahih Muslim" vol. 9, pp 180-181. He commented on this on p.181 saying: "The correct opinion we choose is that it was prohibited and permitted twice: It was permitted before Khaybar and then was prohibited on the Day of Khaybar and then was permitted on the day of the Opening of Makkah which is considered the same day as Awtas since there was no interval between them, and then it was prohibited forever on that day till the Last Day after permitting it for three days.

The prohibition continued from that day onward. It is not permissible to say: It was permissible before Khaybar whereas prohibition was on the Day of Khaybar forever. This opinion was held by Al-Maziry and Al-Qady. This is because the narrations recorded by Muslim regarding its permissibility on the day of the Liberation of Makkah are so clear in this regard that they cannot be abated nor is there anything that prevents repeating its permissibility again. And Allah knows best!

Second: What was stated by Shaykul-Islam Ibn Taymiyyah in his book entitled "Minhajul-Sunnah" and Shamsul-Din ibnul-Qayyim in his book entitled "Zad Al-Ma`ad fi Hadiyy Khayr Al-`Ibad". In the second part of "Minhajul-Sunnah", vol. 2, p.156, Shaykul-Islam stated: "It was authentically narrated from the Prophet (peace be upon him) that he prohibited Mut`ah with women after permitting it. This is what was narrated by Thiqahs (trustworthy) narrators in the Two Sahih (authentic) Books of Hadith (i.e. Al-Bukhari and Muslim) as well as other books of hadith on the authority of Al-Zuhry on the authority of `Abdullah and Al-Hasan the two sons of Muhammad ibn Al-Hanafiyyah that `Aly ibn Abu Talib (may Allah be pleased with him) said to Ibn `Abbas (may Allah be pleased with them both) when he deemed Mut`ah with women permissible: ("You are a person led astray; Allah's Messenger (peace be upon him) forbade us from practicing Mut`ah with women and the meat of domestic donkeys in the year of Khaybar.") The Hadith was narrated on the authority of Al-Zuhry who was the most knowledgeable and the greatest memorizer of the Sunnah among his contemporaries by the Imams of Muslims at their times, like Malik ibn Anas, Sufiyan ibn `Uyaynah, as well as other scholars whose knowledge, uprightness and memorization met Ijma` (consensus of scholars). All scholars unanimously agree that this is a Sahih (authentic) Hadith: They approve of its authenticity and there is no scholar who accused it of any blemish. It was also proved that the Prophet (peace be upon him) prohibited it on the day of the Liberation of Makkah till the Day of Resurrection. Moreover, there was disagreement among

the narrators of hadith reported from `Aly (may Allah be pleased with him), whether his saying: In

the year of Khaybar only referred to the time of prohibiting domestic donkeys, or to both it and Mut`ah with women. The first opinion was held by Ibn `Uyaynah whereas others said: It was prohibited on the year of the Liberation of Makkah. Those who held the second opinion said: It was prohibited but then permitted. A third group (of scholars) claimed that it was made permissible again after Khaybar and then was prohibited at the Farewell Hajj. The numerous Mutawatir narrations (a Hadith reported by a significant number of narrators throughout the chain of narration, whose agreement upon a lie is impossible) confirm that he (peace be upon him) prohibited Mut`ah with women after permitting it; that after its prohibition it was never permitted again; that after it was prohibited in the year of the Opening of Makkah it was never permitted again; that it was not prohibited in the year of Khaybar, rather during the year of Khaybar it was the meat of the domestic donkeys that was forbidden; and that Ibn `Abbas would deem both Mut`ah with women and eating the flesh of domestic donkeys permissible, which made `Aly ibn Abu Talib deny this, where he said to Ibn `Abbas: ("Actually, Allah's Messenger (peace be upon him) prohibited Mut`ah with women and the flesh of domestic donkeys on the day of Khaybar.") Thus, `Aly mentioned them both together when narrating this to Ibn `Abbas (may Allah be pleased with them) because Ibn `Abbas would deem them permissible. It was reported from Ibn `Abbas (may Allah be pleased with them) that he retracted this opinion when he was informed about the Hadith prohibiting them. Therefore, it is clear that Ahl-ul-Sunnah (those adhering to the Sunnah and the Muslim main body) follow `Umar and `Aly (may Allah be pleased with them both) and all the Rightly-Guided Caliphs with regard to what they related from the Prophet (peace be upon him), whereas the Shiites contradicted `Aly with regard to what he related from the Prophet (peace be upon him) and followed what was stated by his opponents.

It was stated by Imam Ibn Al-Qayyim in the benefits of the battle of the Conquest of Makkah in his book "Zad Al-Ma`ad fi Hadiyy Khayr Al-`Ibad": " One of the things that occurred during this

battle was permitting Mut`ah with women and this was then prohibited by Allah's Messenger (peace be upon him) before leaving Makkah. Yet, there is some disagreement regarding the day on which Mut`ah was prohibited. There are four opinions in this regard:

First: This took place on the day of Khaybar. This is the viewpoint of a group of scholars including Al-Shafi`y as well as others.

Second: That it took place in the year of the Opening of Makkah. This is the viewpoint of Ibn `Uyaynah as well as a group of scholars.

Third: That it took place in the year of Hunayn. In fact, this is relevant to the second opinion since there was no interval between the Battle of Hunayn and the Liberation of Makkah.

Fourth: That it took place in the year of the Farewell Hajj. This is Wahm (illusion) on the part of some of the narrators who forgot that it took place in the Opening of Makkah and misunderstood that it happened in the Farewell Hajj in the same way as what happened with Mu`awiyah who misunderstood the `Umrah (lesser pilgrimage) of Al-Ji`ranah for the Farewell Hajj, where he said: "I cut the hair of the Messenger of Allah (peace be upon him) with a wide arrowhead on Al-Marwah during his Hajj." This illusion on his part has been illustrated in the chapter on Hajj. Miscalculating a certain time for another, a certain place for another, and a certain battle for another occurs many times to memorizers and those who come next to them in memorization. The correct opinion is that Mut`ah was prohibited in the year of the Liberation of Makkah. This is because it was authentically recorded in the book of Sahih Muslim that the Companions practiced Mut`ah in the year of

the Liberation of Makkah along with the Prophet (peace be upon him) after his permission. Had

Mut`ah been prohibited at the Battle of Khaybar, its ruling would have been abrogated twice, which never happened and cannot happen in Shari`ah at all. In addition, there were no Muslim women in Khaybar; rather, they were Jewish women. Marrying women from among the People of the Book had not yet been permitted. Rather, they were permitted thereafter when Surah Al-Ma'idah was revealed, wherein Allah (Exalted be He) says:

﴾Made lawful to you this day are At-Tayyibât [all kinds of Halâl (lawful) foods, which Allâh has made lawful (meat of slaughtered eatable animals, milk products, fats, vegetables and fruits)]. The food (slaughtered cattle, eatable animals) of the people of the Scripture (Jews and Christians) is lawful to you and yours is lawful to them. (Lawful to you in marriage) are chaste women from the believers and chaste women from those who were given the Scripture (Jews and Christians) before your time﴿ This is relevant to Allah's (Exalted be He) Saying: ﴾This day, I have perfected your religion for you﴿ and His (Exalted be He) Saying: ﴾This day, those who disbelieved have given up all hope of your religion﴿ This took place during the last days of the Prophet (peace be upon him) after or during the Farewell Hajj. The permissibility to marry women of the People of the Book was not stated at the Day of Khaybar nor did the Muslims have the desire to practice Mut`ah with the women of their enemy before the Liberation of Makkah after which many of their women became captives and slaves to Muslims."

Then, Ibn Al-Qayyim went on saying: "If it is argued: How can you reconcile between this and the hadith that was authentically recorded in the Two Sahih (authentic) Books of Hadith (i.e. Al-Bukhari and Muslim) on the authority of `Aly ibn Abu Talib (may Allah be pleased with him): ﴾That Allah's Messenger (peace be upon him) prohibited Mut`ah with women on the Day of Khaybar as well as the meat of domestic donkeys,"﴿ and this is a Sahih (authentic) and clear hadith in this regard, then our comment is that the narration of this Hadith was

authentically reported through two different wordings: The mentioned above wording is one of them; whereas the second wording states that the Prophet (peace be upon him) just forbade the Companions from practicing Mut`ah marriage and from eating the meat of domestic donkeys on the Day of Khaybar. This is the narration reported by Ibn `Uyaynah on the authority of Al-Zuhry. He said: Qasim ibn Asbagh said that this was narrated by Sufyan ibn `Uyaynah i.e. the Prophet (peace be upon him) prohibited eating the meat of domestic donkeys on the Day of Khaybar but did not prohibit practicing Mut`ah marriage. This was recorded by Abu `Umar ibn `Abdul-Bar in the book entitled "Al-Tamhid". He then said: Most scholars confirm this. This made some narrators wrongly think that the Day of Khaybar was for prohibiting practicing Mut`ah marriage, which made them narrate it as Allah's Messenger (peace be upon him) prohibited Mut`ah with women on the Day of Khaybar as well as the meat of domestic donkeys; whereas some of them just narrated part of the Hadith, saying: Allah's Messenger (peace be upon him) prohibited Mut`ah with women on the Day of Khaybar. The latter made an obvious mistake.

Ibn Al-Qayyim said: "If people ask: What benefit is there in mentioning the two prohibitions together if they did not happen simultaneously, and what has Mut`ah to do with prohibiting the domestic donkeys? Then, our comment is that this Hadith was narrated by `Aly Ibn Abu Talib (may Allah be pleased with him) as proof supporting his argument with his paternal uncle's son `Abdullah ibn

`Abbas in both these matters since Ibn `Abbas would deem both Mut`ah with women and the meat of domestic donkeys permissible. Debating with him on the two issues, `Aly ibn Abu Talib mentioned the prohibition stated by the Prophet (peace be upon him) on them both, where he mentioned that the meat of domestic donkeys was prohibited on the Day of Khaybar but did not state an exact time for the prohibition of Mut`ah with women. He (may Allah be pleased with them both) said: (You are a person led astray; Allah's Messenger (peace be upon him) forbade us from practicing Mut`ah with women and the meat of domestic donkeys on the day of Khaybar) The viewpoint was held by Sufiyan ibn `Uyaynah and most scholars i.e. `Aly (may Allah be pleased with him) narrated both issues together to substantiate his argument with Ibn `Abbas but not confine their prohibition to the Day of Khaybar. May Allah grant us success!

It was stated by Ibn Al-Qayyim in his explanation of what the Battle of Khaybar implied in terms of juristic rulings: "He (peace be upon him) did not prohibit Mut`ah marriage (temporary marriage for a stipulated period) on the day of Khaybar. Rather, it was prohibited on the day of the Liberation of Makkah. This is correct. A group of scholars thought that he (peace be upon him) prohibited it on the Day of

(Part No. 20; Page No. 330)

Khaybar, and they supported their viewpoint with the Hadith related in the Two Sahih (authentic) Books of Hadith (i.e. Al-Bukhari and Muslim) on the authority of `Aly ibn Abu Talib (may Allah be pleased with him) who said: (The Messenger of Allah (peace be upon him) forbade Mut`ah marriage with women on the Day of Khaybar and eating the flesh of domestic donkeys.) Another narration that was related in the Two Sahih (authentic) Books of Hadith (i.e. Al-Bukhari and Muslim) reads: (`Aly (may Allah be pleased with him) heard Ibn `Abbas supporting Mut`ah marriage with women, whereupon `Aly said: "Wait Ibn `Abbas, the Messenger of Allah (peace be upon him) forbade it on the Day of Khaybar as well as eating the flesh of domestic donkeys.) In another narration recorded by Al-Bukhari that `Aly said: (The Messenger of Allah (peace be upon him) forbade Mut`ah marriage with women on the Day of Khaybar and eating the flesh of domestic donkeys.) Seeing that Allah's Messenger (peace be upon him) permitted it on the day of the Liberation of Makkah and then prohibited it again, they (these scholars) said: 'It was prohibited, then permitted and then prohibited again.' Al-Shafi`y (may Allah be pleased with him) said: 'I do not know of anything in Islam that was deemed as Haram (prohibited), then it was made Halal (lawful) and then Haram except Mut`ah marriage.' Some scholars stated: 'It was abrogated on two occasions,' whereas others opposed them and stated: 'It was only prohibited in the year of the Liberation of Makkah before which it had been permitted.' Other scholars stated that `Aly ibn Abu Talib (may Allah be pleased with him) only mentioned the prohibition of Mut`ah marriage and that of eating domestic donkeys together because Ibn `Abbas (may Allah be pleased with them both) would deem them both permissible, whereupon `Aly narrated for him that they both were prohibited by the Prophet (peace be upon him) and he did so to refute him. It was the domestic donkeys that were forbidden on the Day of Khaybar. He mentioned the Day of Khaybar as a specific time for prohibiting domestic donkeys, whereas he mentioned the prohibition of Mut`ah marriage without determining a certain time, and this was recorded in Musnad Imam Ahmad with an authentic chain of narration: (Allah's Messenger (peace be upon him) forbade eating the flesh of domestic donkeys

(Part No. 20; Page No. 331)

on the Day of Khaybar and also forbade Mut`ah marriage.) Another wording reads: (The Prophet (peace be upon him) forbade Mut`ah marriage and forbade eating the flesh of domestic donkeys on the Day of Khaybar.) This narration was related by Sufyan Ibn `Uyaynah in such a detailed and clear manner. Some narrators think that the day of Khaybar was the time when both matters were prohibited and thus, they attached them both to it. After that, some other narrators confined the adverb of time; the day of Khaybar, to just one of the two prohibitions i.e. the prohibition of eating domestic donkeys. This is what resulted in Wahm (illusion). The event of the battle of Khaybar did

not witness the Sahabah (Companions of the Prophet) entering into wedlock temporarily with Jewish women, nor did they ask Allah's Messenger's (peace be upon him) permission to do so, nor did any one recorded its occurrence at this battle. Moreover, there was no mention of it during this battle, and likewise with regard to its being practiced or with regard to its prohibition. On the contrary, it is well-known that the Liberation of Makkah witnessed both the practice of Mut`ah marriage as well as its being prohibited. This interpretation is the sounder one with regard to both the interpretations we have just mentioned." This is what was mentioned by Ibn Al-Qayyim in this regard.

What has just been stated by Ibn Al-Qayyim is further confirmed through the explanation made by Al-Hafizh Ibn Hajar in his book entitled "Fath Al-Bari" (vol. 9, p. 170) where he stated: "None of the narrations -i.e. those recording the time of the prohibition of Mut`ah marriage - is true unless it is justified except for that of the Liberation of Makkah. With regard to the Battle of Khaybar, although the ways of transmitting these Hadiths are valid, the above-mentioned explanations of scholars in this regard must be taken into consideration. As for `Umrat-ul-Qada' (`Umrah performed instead of the `Umrah the Prophet was prevented from completing), the Athar (narrations from the Companions) recorded about Mut`ah marriage during this time is not Sahih (authentic) since they are from Hadith Mursal (a Hadith with no Companion of the Prophet in the chain of narration) narrated by Al-Hasan whose Mursal Hadiths are Da`if (weak) because he used to narrate from any person. If we suppose that he verified the narration, it is most likely that he meant the Days of Khaybar, since both prohibitions

took place within the same year. This is the same as their prohibition in Al-Fath (the Liberation of Makkah) and (the battle of) Awtas. As for the story of Tabuk, there is nothing in the Hadith of Abu Hurayrah that clearly states that they practiced Mut`ah marriage during this battle. Thus, it is most likely that this took place in the past and then this was prohibited and they bid them farewell at the time; or that the prohibition took place at an earlier time but it did not reach some of them who continued to practice it based on the Rukhsah (concession). This is why the prohibition on the part of the Prophet (peace be upon him) was joined with anger since it had been prohibited before. Nevertheless, this Hadith that was narrated by Abu Hurayrah has a blemish since it is reported by Mu'ammal Ibn Isma`il on the authority of `Ikrimah ibn `Ammar and the narrations of them both are blemished.

The Hadith narrated by Jabir is not Sahih (authentic) since it is narrated by `Abbad ibn Kathir who is Matruk (a narrator whose Hadith transmission was discarded due to unreliability). With regard to stating this time to be the Farewell Hajj, there is inconsistency among the narrations of Al-Rabi` ibn Sabrah in this regard. Moreover, the narration on his part that this took place during the Liberation of Makkah is both more correct and famous. Even if he memorized it this way, then the narration recorded by Abu Dawud states no more than prohibition, which means that perhaps the Prophet (peace be upon him) wanted to repeat the prohibition again in order to publicize it and make it known for any one who did not hear this before. Accordingly, none of the dates recorded about the prohibition is still Sahih (authentic) and clear except the Battle of Khaybar and the Liberation of Makkah. With regard to the Battle of Khaybar, we have just mentioned the discussion of scholars in this regard. Ibn Al-Qayyim added in his book entitled "Al-Hady" that the Sahabah (Companions of the Prophet) did not enter into wedlock temporarily with Jewish women, which strengthens the viewpoint that the prohibition did not take place at the Battle of Khaybar or there were no Mut`ah marriage that took place during that battle. Yet, it can be argued that the Jews of

Khaybar would give their females in marriage to men from Al-Aws and Al-Khazraj before the advent of Islam. It may be that they enjoyed some of their women during the battle, which invalidates the

Istidlal (reasoning by methods other than the recognized sources) that he stated. Then Al-Hafizh ibn Hajar resumed his comment on the narration of the Farewell Hajj, where he stated on p. 171: "As for the Farewell Hajj, it is clear that what occurred therein is just stating the prohibition, if the narration recorded in this regard is proven to be Sahih (authentic), since the Sahabah performed Hajj at that time accompanied by their women after Allah (Exalted be He) had provided for them out of His bounty, which means that they were neither experiencing hardship nor missing their wives for a long time. To put it another way, this narration on the part of Sabrah was reported by his son, Al-Rabi`, from him. Yet, his appointing the date of prohibition therein varies in the two narrations. Since the two narrations state the same Hadith within the same story, it is obligatory to give preponderance to one of them in preference to the other. The way of transmitting the Hadith related by Muslim states that the preponderant opinion is that the prohibition took place during the day of the Liberation of Makkah. Thus, it should be adopted, and Allah knows best." Among what was stated by Al-Hafizh regarding the difference within the narrations on this topic is his comment on what was narrated by `Abdul-Wahhab Al-Thaqafy on the authority of Yahya ibn Sa`id on the authority of Malik on this Hadith, i.e. the Hadith regarding the prohibition of Mut`ah marriage and eating the flesh of domestic donkeys during the Battle of Khaybar where he stated: "...during the day of Hunayn," (as the day of the prohibition of Mut`ah marriage in the hadiths) instead of the Khayber as related by Al-Nasa'iy and Al-Daraqutny. However, they both warned that this is a Wahm (illusion) only assumed by `Abdul-Wahhab. As for Al-Hafizh's comment on what was narrated by Ishaq ibn Rashid on the authority of Al-Zuhry on his (`Abdul-Wahhab's) authority with the wording: "Mut`ah marriage was prohibited during the Battle of Tabuk." He stated after mentioning this narration: "It is stranger than the Hadith narrated by `Abdul-Wahhab." It means that mentioning Tabuk in this narration is also false.

In his book entitled "Talkhis Al-Habir fi Takhrij Ahadith al-Rafi`y al-Kabir", (vol. 3, p. 154, 155), he stated: "A useful notice: It was reported by Al-`Abbady

in his book entitled "Al-Tabaqat," that Al-Shafi`y said: 'I do not know of anything in Islam that was deemed as Halal (lawful) on one occasion, then Haram (prohibited), then made Halal, and then Haram except Mut`ah marriage.'" Some scholars stated that it was abrogated on three occasions, whereas others stated that it was abrogated on more occasions than that. This is indicated through the difference between the narrations referring to the time it was prohibited. If all these narrations are Sahih (authentic), then the way to match between them is that this took place at various times. The best interpretation for matching between these narrations is what was adopted by a group of the verifying scholars who opined that it was never permitted in residence and in times of prosperity; rather, it was permitted while traveling and in times of need. The Hadiths are obvious in this regard. This is stated clearly in the Hadith related by Ibn Mas`ud: ﴾We used to go out for battles and we had no women (wives) with us, so he (the Prophet) allowed us to marry a woman (temporarily).﴿

Based on this, all the prohibitions that were stated in various places can be interpreted that what was meant by its being prohibited each time was the fact that the need for it was over and that it was determined to return to the homeland. This means that this was not a prohibition forever, except for that which took place at the end. There are six or seven Hadiths stating the time it was prohibited, which we shall mention in their temporal order:

First: \`Umrat-ul-Qada' (\`Umrah performed instead of the \`Umrah the Prophet was prevented from completing). It was recorded by \`Abdul-Razzaq in his Musanaf that Ma\`mar stated on the authority of \`Amr that Al-Hasan said: "Mut\`ah marriage was only permitted for three days during \`Umrat-ul-Qada'. It was never permitted either before or after it." He presents as evidence to substantiate his viewpoint the Hadith that was recorded by Ibn Hibban in his book of Sahih Hadiths on the authority of Sabrah ibn Mi\`bid who said: (We went out with the Messenger of Allah (peace be upon him) and when we finished our \`Umrah, he said to us: "Why do you not enjoy these women...")

(Part No. 20; Page No. 335)

Second: As for the narration mentioning the day of Khaybar, the Hadith stating that it is agreed upon by Al-Bukhari and Muslim on the authority of Imam \`Aly. It reads: (The Messenger of Allah (peace be upon him) forbade Mut\`ah marriage on the Day of Khaybar.) This Hadith was deemed Mushkil (problematic) by Al-Suhayly as well as other scholars. Yet there is no problem in it. There is a similar Hadith recorded in Musnad Ibn Wahb on the authority of Ibn \`Umar and its Sanad (chain of narrators) is authentic. It was recorded by Al-Bayhaqy as well as other Hadith compilers.

Third: The narration that appointed the Liberation of Makkah as a time for the prohibition of Mut\`ah marriage. This Hadith was narrated by Muslim on the authority of Sabrah ibn Mi\`bid: (On the Day of the Opening of Makkah, the Messenger of Allah (peace be upon him) forbade contracting temporary marriage.) Another narration reads: (The Prophet (peace be upon him) permitted us to contract Mut\`ah marriage on the Day of the Opening of Makkah, when we entered Makkah; then before leaving Makkah, he prohibited it.) A third narration reads: (Allah's Messenger (peace be upon hm) said: 'O people, I had permitted you to contract Mut\`ah marriage with women, but Allah has forbidden it (now) until the Day of Resurrection.')

Fourth: The narration that appointed the day of the Battle of Hunayn as a time for the prohibition of Mut\`ah marriage. This was related by Al-Nasa'iy on the authority of \`Aly. Yet, it is clear that it is Tashif (misspelling in manuscripts) instead of the word Khaybar. It was stated by Al-Daraqutny that \`Abdul-Wahhab Al-Thaqafy was the only one to narrate this Hadith on the authority of Yahya Ibn Sa\`id on the authority of Malik with mentioning the word "Hunayn". In another narration by Salamah ibn Al-'Akwa\`, it is recorded that this took place during the Battle of Awtas. Al-Suhayly said: This narration agrees with the narration stating that this took place during the year of "the Liberation of Makkah" as they both took place in the same year

Fifth: The narration that appointed the Battle of Tabukm as a time for the prohibition of Mut\`ah marriage. This was narrated by Al-Hazimy from \`Abbad ibn Kathir on the authority of Ibn \`Aqil on the authority of Jabir who said: (We set out with Allah's Messenger (peace be upon him) to the Battle of Tabuk till when we reached Al-Thaniyyah which is beyond Al-Sham (The Levant). Some women came to us with whom we contracted Mut\`ah marriage and they would go around our tents. Observing this, Allah's Messenger (peace be upon him)

(Part No. 20; Page No. 336)

asked us about them and we informed him about this. He (peace be upon him) became angry, stood up and delivered a sermon wherein he praised and glorified Allah and forbade Mut\`ah marriage. Thus, we left them that day and never practiced this type of marriage again. This is why the place was called on that day Thaniyyah Al-Wada\`)

The Sanad (chain of narrators) of this Hadith is Da\`if (weak). Yet it is substantiated with the other narration recorded by Ibn Hibban in his book of Sahih (authentic) Hadiths on the authority of Abu Hurayrah. Moreover, it was recorded by Al-Bayhaqy with the above-mentioned Sanad but its wording

reads: ﴾We set out with Allah's Messenger (peace be upon him) to the Battle of Tabuk, and camped at Thaniyyah Al-Wada`... ﴿ This can be interpreted that those of the Sahabah who practiced Mut`ah marriage were not informed about the prohibition that had taken place on the day of the Liberation of Makkah. This is why the Prophet (peace be upon him) got angry.

Sixth: The narration that appointed the Farewell Hajj as a time for the prohibition of Mut`ah marriage. This was narrated by Abu Dawud on the authority of Ibn Sabrah, who said: ﴾I bear witness that my father reported that the Prophet (peace be upon him) forbade it during the Farewell Pilgrimage.﴿ This can be explained in two ways: First, the aim behind mentioning the prohibition in the Farewell Hajj was to publicize the ruling since it was witnessed by a large number of people. Second, it may be that one of its narrators confused the Opening of Makkah with the Farewell Hajj because most of the narrators reporting this Hadith from Sabrah state that this (the prohibition) took place during the Liberation of Makkah. And Allah knows best.

Third: What was stated by Imam Al-Bayhaqy on the chapter on Mut`ah marriage in his book entitled "Al-Sunan Al-Kubrah", vol. 7, p. 201, 202, where Abu `Abdullah Al-Hafizh related on the authority of others who said: "We were told by Abu Al-`Abbas Muhammad ibn Ya`qub that Al-Rabi` ibn Sulayman related from Al-Shafi`y from Sufyan from

(Part No. 20; Page No. 337)

Isma`il ibn Abu Khalid from Qays ibn Aby Hazim who said: "I heard `Abdullah ibn Mas`ud (may Allah be pleased with him) saying: ﴾We used to go out for battles with the Messenger of Allah (peace be upon him) and we had no women (wives) with us. So we wanted to castrate ourselves, but the Messenger of Allah (peace be upon him) forbade us to do that and afterwards he allowed us to marry a woman (temporarily) by giving her anything (as Mahr).﴿ Abu `Abdullah added in his narration with the same Sanad that Al-Shafi`y said: Ibn Mas`ud mentioned the Rukhsah (concession) of Mut`ah marriage but he mentioned no time to indicate whether this was before or after Khaybar. It is most likely that the Hadith related by `Aly ibn Abu Talib (may Allah be pleased with him) on the prohibition issued by the Prophet (peace be upon him) against Mut`ah marriage is -and Allah knows best- Nasikh (abrogating text) of it (i.e. that related by ibn Mas`ud). Shaykh Ibn Al-Bayhaqy (may Allah be merciful with him) stated that it was mentioned in the Hadith related by Ibn Mas`ud that he said: ﴾We used to, while we were young,...﴿ Abu `Abdullah Al-Hafizh told us that `Abdullah Ibn Muhammad Al-Ka`by told us that Muhammad Ibn Ayyub told us that Abu Bakr ibn Abu Shaybah told us that Waki` told us from Isma`il ibn Abu Khalid from Qays ibn Hazim that `Abdullah (may Allah be pleased with him) said: ﴾We were young, so we said: O Allah's Messenger, should we not have ourselves castrated? He said: No, then he allowed us to observe temporary marriage to women giving them even a garment, then `Abdullah recited: ﴾O you who believe! Make not unlawful the Tayyibât (all that is good as regards foods, things, deeds, beliefs, persons) which Allâh has made lawful to you﴿ ﴿ It was narrated by Imam Muslim in his Sahih (authentic) book of Hadith on the authority of Abu Bakr ibn Abu Shaybah.

(Part No. 20; Page No. 338)

Commenting on this, Shaykh Al-Bayhaqy said: "This narration contains what proves that this took place before the Battle of Khaybar or before the Opening of Makkah. This is because `Abdullah ibn Mas`ud (may Allah be pleased with him) died in 32 A.H., when he was more than sixty years old; and since the Conquest of Khaybar was in the seventh year of Hijrah, and the Opening of Makkah was in the eighth year of Hijrah, then it is inferred that `Abdullah, during both the Conquest and the Opening, was about forty years of age, which means that he had passed the stage of youth at the time. Allah's Messenger (peace be upon him) prohibited Mut`ah marriage during the Conquest of

Khaybar. This is quite clear through the narration told by Abu Bakr Ahmad ibn Al-Hasan Al-Qady and Abu Zakariyah Yahiyah ibn Ibrahim ibn Muhammad ibn Yahiyah who said that Abu Al-`Abbas Muhammad Ibn Ya`qub told him that Muhammad `Abdul-Hakam reported that Ibn Wahb told him that Malik Ibn Anas, Yunus ibn Yazid and Usamah ibn Zayd reported on the authority of Ibn Shihab told them on the authority of both `Abdullah and Al-Hassan, the two sons of Muhammad ibn `Aly: (The Hadith with its chain of transmission). We were also told by Abu `Abdullah Al-Hafizh, Abu Zakariyah ibn Ishaq and Abu Bakr ibn Al-Hasan who said that they were told by Abu Al-`Abbas Muhammad Ibn Ya`qub that Al-Rabi` ibn Sulayman reported on the authority of Al-Shafi`y that Malik said: (Hadith). Muhammad ibn `Abdullah Al-Hafizh reported that Abu Bakr ibn Ishaq related that Isma`il Ibn Qutaybah told him that Yahya Ibn Yahya said that he recited before Malik who reported it on the authority of Ibn Shihab who narrated it from both `Abdullah and Al-Hasan, the two sons of Muhammad ibn `Aly on the authority of their father on the authority of `Aly Ibn Abu Talib (may Allah be pleased with him) who said: ﴾The Messenger of Allah (peace be upon him) forbade Mut`ah marriage with women on the Day of Khaybar and eating the flesh of domestic donkeys.﴿ This is the wording of the Hadith narrated by Al-Shafi`y

(Part No. 20; Page No. 339)

and Yahya Ibn Yahya. The narration of Ibn Wahb reads: ﴾The Prophet (peace be upon him) forbade, on the Day of Khaybar, Mut`ah marriage with women and eating the flesh of domestic donkeys.﴿ It was related by Al-Bukhari in his book of Sahih (authentic) Hadiths on the authority of `Abdullah ibn Yusuf and others from Malik. It was also related by Imam Muslim on the authority of Yahya ibn Yahya from Malik and from both Abu Al-Tahir and Harmalah on the authority of Ibn Wahb on the authority of Yunus who said that we were told by Muhammad ibn `Abdullah Al-Hafizh who said that he was told by `Abdullah ibn Muhammad Al-Ka`by who said that he was told by Muhammad ibn Ayyub who said that he was told by Musaddad who said that he was told by Yahya who said that he was told by `Ubaydullah ibn `Umar who said that he was told by Al-Zuhry wh said that he was told by both Al-Hasan and `Abdullah, the two sons of, Muhammad ibn `Aly from their father ﴾that `Aly (may Allah be pleased with him) was told that Ibn `Abbas (may Allah be pleased with them both) sees no problem with Mut`ah marriage, whereupon `Aly said: "Verily, Allah's Messenger (peace be upon him) forbade it on the Day of Khaybar and eating the flesh of domestic donkeys.﴿ It was related by Al-Bukhari in his Sahih (authentic) book of Hadiths on the authority of Musadad. It was also narrated by Muslim in another Sanad (chain of narrators) from `Ubaydullah ibn `Umar who said that he was told by Abu Muhammad `Abdullah ibn Yusuf Al-Asbahany who said that he was told by Abu Sa`id Ahmad ibn Muhammad ibn Ziyad Al-Basry in Makkah who said that he was told by Al-Hasan ibn Muhammad Al-Za`farany who said that he was told by Sufyan ibn `Uyaynah he said that he was told by Al-Zuhry who said that he was told by Al-Hasan ibn Muhammad and `Abdullah ibn Muhammad on the authority of their father that `Aly (may Allah be pleased with him) said to Ibn `Abbas (may Allah be pleased with them both): ﴾You are a person who became perplexed. Do you not know that Allah's Messenger (peace be upon him) prohibited contracting temporary marriage with women and the eating of the meat of domestic donkeys?﴿ This Hadith was related by Al-Bukhari in his Sahih (Authentic Hadith Book) from Malik ibn Isma`il on the authority of Ibn `Uyaynah. This narration adds: ﴾...at the time of Khaybar.﴿ It was also related by Imam Muslim on the authority of a group of narrators

(Part No. 20; Page No. 340)

from Ibn `Uyaynah who stated in the narration reported from him by Al-Humaydy that this date has to do with the prohibition against eating the flesh of domestic donkeys but it has nothing to do with Mut`ah marriage. We were told by Abu Al-Husayn ibn Al-Fadl Al-Qattan, in Baghdad, he said, we

were told by `Abdullah ibn Ja`far ibn Darastawayah who said that he was told by Ya`qub ibn Sufyan; who said that he was told by Al-Humaydy who said that he was told by Sufyan who said that he wase told by Al-Zuhry who said that he was told by both Hasan and `Abdullah, the two sons of Muhammad ibn `Aly of whom Hasan was much more reliable than `Abdullah, on the authority of their father that `Aly (may Allah be pleased with him) said to Ibn `Abbas (may Allah be pleased with him): ﴾You are a person who became perplexed. Verily, the Prophet (peace be upon him) prohibited the contracting of temporary marriage with women and the eating of the meat of domestic donkeys at the time of Khaybar.﴿ Sufyan said this means that he (peace be upon him) forbade eating the meat of domestic donkeys at the time of Khaybar but this was not the time during which he (peace be upon him) prohibited Mut`ah marriage. Al-Bayhaqy said: "What has been stated by Sufyan is probable. Had `Aly ibn Abu Talib (may Allah be pleased with him) not known that Mut`ah marriage was abrogated and that it was absolutely prohibited after the Rukhsah (concession) given in it, he would not have refuted Ibn `Abbas (may Allah be pleased with them both). And Allah knows best."

(Part No. 20; Page No. 341)

Ibn `Umar narrated that it was prohibited on the Day of Khaybar. It was reported by Abu `Abdullah Al-Hafizh, Abu Zakariyah ibn Is-haq and Abu Bakr ibn Al-Hasan who said that they were told by Abu Al-`Abbas Muhammad Ibn Ya`qub who said that he was told by Muhammad ibn `Abdullah ibn `Abdul-Hakam who said that he was told by Ibn Wahb who said that he was told by `Umar ibn Muhammad ibn Zayd ibn `Abdullah ibn `Umar ibn Al-Khattab on the authority of Ibn Shihab who said that he was told by Salim ibn `Abdullah that (someone asked `Abdullah ibn `Umar (may Allah be pleased with them both) about Mut`ah marriage (temporary marriage for a stipulated period), and he replied: 'It is Haram (prohibited).' The man said: 'But so-and-so speaks up for it.' `Abdullah replied: 'By Allah, he knows that Allah's Messenger (peace be upon him) forbade it on the Day of Khaybar and we are not fornicators.') Al-Bayhaqy said: "Allah's Messenger (peace be upon him) permitted Mut`ah marriage on the Opening of Makkah and then prohibited it till the Day of Resurrection." Then, he mentioned the authentically proven Hadiths that Mut`ah marriage was permitted during the year of the Liberation of Makkah and then it was prohibited this year.

4- What was preferred by Imam Al-Hafizh Abu Bakr Muhammad ibn Musa Al-Hazimy Al-Hamadany in his book titled "Al-I`tibar fin-Nasikh wal-Mansukh" (p. 138-140) where he said under the chapter entitled "Chapter on Mut`ah marriage":

(Part No. 20; Page No. 342)

We were told by Abu Zur`ah Tahir ibn Muhammad ibn Tahir who said that he was told by Makky ibn Mansur who said that he was told by Ahmad ibn Al-Hasan Al-Qady who said that he was told by Muhammad ibn Ya`qub who said that he was told by Al-Rabi` who said that he was told by Al-Shafi`y who said that he was told by Sufyan on the authority of Isma`il ibn Abu Khalid on the authority of Qays ibn Abu Hazim who said that he heard Ibn Mas`ud saying: (We used to go out for battles with the Messenger of Allah (peace be upon him) and we had no women (wives) with us. So we wanted to castrate ourselves, but the Messenger of Allah (peace be upon him) forbade us to do that and afterwards he allowed us to marry a woman (temporarily) by giving her anything (as Mahr).) The way of transmitting this Hadith is an authentic one. This ruling was permitted and legislated at the early days of Islam. The Prophet (peace be upon him) permitted it for Muslims due to the cause mentioned by Ibn Mas`ud and this was only during their travels. We have no narration that the Prophet (peace be upon him) permitted it for Muslims while in residence. This is why he (peace be upon him) prohibited them from it more than once, and then permitted it for them at different times, till he (peace be upon him) prohibited it during his last days in the Farewell Hajj. This prohibition was forever and not temporary. Now there is no disagreement about this among the scholars and Imams of the Muslim Ummah (nation based on one creed), except for an opinion adopted by some Shi`ah (Shiites), and that it is reported that Ibn Jurayj deems it permissible.

In what follows, we will mention that which proves the authenticity of what we stated. I was told by Muhammad ibn `Umar ibn Abu `Isa Al-Hafizh who said that he was told by Al-Hasan ibn Ahmad who said that he was told by Ahmad ibn `Abdullah who said that he was told by Muhammad ibn Bakr in his letter that Dawud told him that Musaddad told him that `Abdul-Warith told him that Isma`il ibn Umayyah told him that Al-Zuhry reported that they were sitting with `Umar ibn `Abdul-`Aziz when

they talked about Mut`ah marriage. A man who is called

Al-Rabi` ibn Sabrah said: ﴾I bear witness that my father reported that the Prophet (peace be upon him) forbade it during the Farewell Pilgrimage.﴿ I read before Muhammad ibn Dhakir ibn Muhammad ibn Ahmad Al-Mustamly that he was told by Al-Hasan ibn Ahmad who said that he was told by Muhammad ibn Ahmad Al-Katib who said that he was told by `Aly ibn `Umar who said that he was told by Abu Bakr ibn Abu Dawud who said that he was told by Ya`qub ibn Sufyan who said that he was told by Ibn Bakir who said that he was told by `Abdullah ibn Lahi`ah on the authority of Musa ibn Ayyub on the authority of Iyas ibn `Amir on the authority of `Aly ibn Abu Talib (may Allah honor his face) who said: ﴾The Messenger of Allah (peace be upon him) forbade Mut`ah marriage.﴿ He said: "It was only for the one who could not afford (expense), but when Allah revealed (the rulings of) marriage, divorce, Iddah (waiting period after divorce or death of a husband), inheritance between husband and wife, it was abrogated."

This is a Hadith Gharib (a Hadith with a single narrator usually at the beginning of the chain of narration) through this Sanad (chain of narrators). There is a Hadith Sahih (a Hadith that has been transmitted by people known for their uprightness and exactitude; free from eccentricity and blemish) reported from `Aly in this regard in many chains of transmission. It was reported on his authority by the scholars of Kufa. The fame of this Hadith was widespread to the extent that it cannot be denied. Moreover, no one can count its ways of transmission.

Muhammad ibn Ibrahim ibn `Aly Al-Khatib narrated that Yahya ibn `Abdul-Wahhab ibn Muhammad said that Muhammad ibn Ahmad Al-Katib said that `Abdullah ibn Muhammad said that Abu Ya`la said that Abu Khaythamah said that Sufyan said that Al-Zuhry said that both Hasan and `Abdullah, the two sons of Muhammad ibn `Aly reported from their father on the authority of `Aly (may Allah be pleased with him) who said: ﴾The Prophet (peace be upon him) forbade Mut`ah marriage on the Day of Khaybar and eating the flesh of domestic donkeys.﴿ There is no contradiction between this Hadith and that related by Al-Rabi` ibn Sabrah from his father wherein he mentioned that the prohibition was in the Farewell Hajj, since we have explained that this took place several times the last of which was during the Farewell Hajj.

What proves the authenticity of what we have mentioned is the Hadith narrated by Abu Al-Fadl Al-Adib who said that he was told by Sa`d ibn `Aly Al-`Ijly who said that he was told by Al-Qady Abu Al-Tayyib who said that he was told by `Aly ibn `Umar who said that he was told by `Abdullah ibn Dawud who said that he was told by Muhammad ibn Yahya who said that he was told by Yunus ibn Muhammad who said that he was told by `Abdul-Wahid ibn Ziyad who said that he was told by Abu `Umays on the authority of Iyas ibn Salamah on the authority of his father who said: ﴾The Prophet (peace be upon him) permitted contracting Mut`ah marriage for three nights in the year of Awtas and then forbade it.﴿ He said: "Abu Ishaq Ibrahim ibn `Abdul-Rahman Al-Qazwiny said that he was told by Abu Bakr Muhammad ibn Al-Fadl Al-Tabary who said that he was told by Hannad ibn Al-Sary who said that he was told by `Abdul-Rahim ibn Sulayman on the authority of `Abbad ibn Kathir who said that he was told by `Abdullah ibn Muhammad ibn `Aqil who said that he heard Jabir ibn `Abdullah Al-Ansary saying: ﴾We set out with Allah's Messenger (peace be upon him) to the Battle of

Tabuk. When we reached Al-`Aqabah (a place) behind Al-Sham (The Levant), some women came

and wandered around our tents. We contracted Mut`ah marriage with them. Then, Allah's Messenger (peace be upon him) came to us. Looking at them, he (peace be upon him) asked: 'Who are these women?' We said: 'O Allah's Messenger, these are women with whom we have practiced Mut`ah marriage.' He (peace be upon him) became very angry, stood up and delivered a sermon wherein he praised and glorified Allah and forbade Mut`ah marriage. Thus, we left them on that day and never practiced this type of marriage again. This is why the place was called on that day Thaniyyah Al-Wada` (farewell).)

Imam Abu `Abdullah Muhammad ibn Ahmad Al-Ansary Al-Qurtuby said in his book entitled "al-Jami` Li-Ahkam al-Qura'n" (vol. 5, pp. 130-132): "Scholars disagreed on how many times Mut`ah marriage was permitted and abrogated. Muslim related in his Sahih (authentic) book of Hadith on the authority of `Abdullah that he said: (We used to go out for battles with the Messenger of Allah (peace be upon him). So we said (to the Prophet peace be upon him): 'Shall we castrate ourselves?' But he (peace be upon him) forbade us to do that and afterwards he allowed us to marry women (temporarily) by giving them anything (as a Mahr) even a garment.) Abu Hatim Al-Bisty said in his book of Sahih (authentic) Hadith: "Their saying to the Prophet (peace be upon him): 'Shall we castrate ourselves?' means that Mut`ah marriage was first prohibited before he (peace be upon him) permitted it for them. Had it not been prohibited, their inquiry about this would have been meaningless. Then, he (peace be upon him) gave them Rukhsah (concession) during battles to marry women (temporarily) by giving them anything as a Mahr. Then, he (peace be upon him) forbade it in the year of Khaybar. Then, he (peace be upon him) permitted it in the year of the Liberation of Makkah and then he prohibited it three days later till the Day of Resurrection."

Ibn Al-`Araby said: "Mut`ah marriage is one of the most remarkable statutes in Shari`ah (Islamic law), since it was permitted at the beginning of Islam, then forbidden during the Battle of Khaybar, then permitted again at the Battle of Awtas. Finally, it was forbidden and remained forbidden. No other statute in Islam was changed for a number of times with the exception of the Qiblah (direction faced for Prayer towards the Ka`bah), for that was abrogated twice before being finalized.

Other authorities who have studied the traditions concerning Mut`ah marriage say that its statute was changed seven times. Ibn Abu `Amrah narrated that it was at the beginning of Islam; whereas Salamah ibn Al-Akwa` narrated that it was in the year of Awtas; and a third narration on the authority of `Aly states that it was prohibited on the Day of Khaybar.

There is a narration on the authority of Al-Rabi` ibn Sabrah stating that it was permitted on the day of the Liberation of Makkah. Al-Qurtuby states that all the above-mentioned narrations are recorded in Sahih Muslim. In other books, it is recorded on the authority of `Aly that it was prohibited on the Battle of Tabuk. This was narrated by Is-haq ibn Rashid on the authority of Al-Zuhry on the authority of `Abdullah ibn Muhammad ibn `Aly on the authority of his father from `Aly. This narration on the part of Is-haq ibn Rashid is reported by no other narrator from Ibn Shihab. This is what was stated by Abu `Umar (may Allah be merciful with him).

In the compilation of Hadiths by Abu Dawud, it is recorded in a Hadith narrated by Al-Rabi` ibn Sabrah that Mut`ah marriage was prohibited during the Farewell Hajj. Abu Dawud deemed that this is the most authentic narration reported in this regard. `Amr narrated on the authority of Al-Hasan that Mut`ah marriage was only permitted for three days during `Umrat-ul-Qada' (`Umrah performed instead of the `Umrah the Prophet was prevented from completing). It was never permitted neither before nor after it. This Hadith was also narrated from Sabrah. Thus, there are seven occasions wherein Mut`ah marriage was permitted and forbidden.

Abu Ja`far Al-Tahawy said: "None of the Hadiths which are quoted as referring to the permissibility of Mut`ah marriage in unconditional terms are in fact unconditional, since they specify that Mut`ah marriage was permitted only during journeys. After every journey the Prophet (peace be upon him) would prohibit it. None of the transmitters of Hadith say that the Prophet (peace be upon him) permitted Mut`ah marriage while he and his Sahabah (Companions of the Prophet) were together in their homes and not traveling. The same was reported from Ibn Mas`ud.

As for the Hadith of Sabrah, which states that the Prophet (peace be upon him) permitted Mut`ah marriage during the Farewell Pilgrimage, Al-Tahawy acknowledges that this is not in keeping with the other Hadiths. But having investigated all the traditions in this regard, he found another Hadith almost identical to that of Sabrah, but it was related by `Abdul-`Aziz Ibn `Umar Ibn `Abdul-`Aziz in particular. It was narrated by Isma`il ibn `Ayyash on the authority of `Abdul-`Aziz ibn `Umar ibn `Abdul-`Aziz who places this occasion at the Opening of Makkah, when the men complained of being away from their wives and the Prophet (peace be upon him) gave them permission to practice Mut`ah marriage. They could not have complained of such separation during the Farewell Pilgrimage, since they have accompanied their wives with them, and the single men could have taken permanent wives in Makkah. So the special situation that existed during the other journeys and battles was lacking. The Prophet (peace be upon him) usually permitted Mut`ah marriage during journeys away from Madinah, in this case he also permitted it;

but then he banned it for the final time wanting all the Muslims to know about it, for they were all present during the Farewell Pilgrimage. There is also the fact that the people of Makkah were in the habit of practicing Mut`ah marriage widely. Thus, the Prophet (peace be upon him) banned Mut`ah marriage in Makkah so that they would understand that they could not continue in their former custom.

6- What was stated by Al-Hafizh Ibn Kathir in his book entitled "Al-Bidayah wal-Nihayah" (vol. 4, p. 193): "People mentioned the Hadith recorded in the Two Sahih (authentic) Books of Hadith (i.e. Al-Bukhari and Muslim) from Al-Zuhry on the authority of both `Abdullah and Al-Hasan, the two sons of Muhammad ibn Al-Hanafiyyah, on the authority of their father from his father `Aly ibn Abu Talib (may Allah be pleased with him) who said: ﴾The Prophet (peace be upon him) forbade Mut`ah (temporary marriage) on the Day of Khaybar and eating the flesh of domestic donkeys.﴿ This is the wording recorded in the Two Sahih (authentic) Books of Hadith (i.e. Al-Bukhari and Muslim) from Malik and other transmitters from Al-Zuhry. The Hadith entails linking the prohibition against Mut`ah marriage to the Day of Khaybar. Yet this is problematic in two aspects: First, at the Battle of Khaybar there were no women with whom they contracted Mut`ah marriage since the women they captured rendered them in no need of Mut`ah marriage.

Second, it was authentically reported in Sahih Muslim on the authority of Al-Rabi` ibn Sabrah on the authority of Mi`bad on the authority of his father who said: ﴾The Prophet (peace be upon him) permitted Mut`ah marriage for Muslims during the year of the Opening of Makkah and then he prohibited it before leaving Makkah till the Day of Resurrection, where he (peace be upon him) said: "Verily, Allah prohibited it till the Day of Resurrection."﴿ Accordingly, the Prophet (peace be uopn him) must have prohibited it, then permitted it, and then it was prohibited again. This means that the ruling was abrogated twice, which is not correct. This is what led Al-Shafi`y to state that he does not know of anything in Islam that was Halal (lawful) on one occasion, then it was made Haram (prohibited), then Halal and then Haram except Mut`ah marriage. He only stated

this conclusion based on these two Hadiths as we have just mentioned. Al-Suhayly and other transmitters reported that some scholars adopted the viewpoint that it was permitted on three occasions and forbidden on three occasions,' whereas others stated that it was abrogated on four occasions. Yet this is not correct. And Allah knows best.

They differed regarding the first time it was prohibited. It was said: 'This ruling was issued during the battle of Khaybar.' Others said: 'It was issued during `Umrat-ul-Qada' (`Umrah performed instead of the `Umrah the Prophet was prevented from completing).' A third group said: 'It was issued during the Liberation of Makkah.' This saying is more apparent. A fifth one said: It was issued during the battle of Awtas.' This saying is relevant to the previous opinion. A fourth group said: 'It was issued during the battle of Tabuk.' A sixth group said: 'It was issued during the Farewell Hajj.' This was narrated by Abu Dawud.

Some scholars tried to interpreted the Hadith narrated by `Aly (may Allah be pleased with him) that there are differences in the word order of the Hadith and that the correctly memorized Hadith is that narrated by Imam Ahmad. He said that he was told by Sufyan on the authority of Al-Zuhry on the authority of both Al-Hasan and `Abdullah, the two sons of Muhammad on the authority of their father - of these two sons Hasan was more reliable- that `Aly said to Ibn `Abbas: ﴾Allah's Messenger (peace be upon him) forbade Mut`ah marriage and eating the flesh of domestic donkeys on the Day of Khaybar. ﴿ They said that the narrator thought that his saying "on the Day of Khaybar" was an adverb of time for both prohibitions, which is not correct. Rather, it is an adverb of time for the prohibition against eating the flesh of domestic donkeys.

There is no defined time determining Mut`ah marriage; rather, it was mentioned by the way together with the other prohibition. This is because `Aly (may Allah be pleased with him) was informed that Ibn `Abbas deemed both Mut`ah marriage and eating the flesh of domestic donkeys permissible, which is well-known. Thus, he was told by Amir Al-Mu'minin (Commander of the Believers) `Aly: ﴾You are a person who became perplexed. Verily, Allah's Messenger prohibited

contracting Mut'ah marriage and eating the meat of domestic donkeys during the Day of Khaybar. ﴿ Thus, he mentioned both prohibitions to deter him from what he thought of the permissibility of these two matters. This interpretation was preferred by our Shaykh Al-Hafizh Abu Al-Hajjaj Al-Mizy (may Allah bestow His Mercy upon him, Amen!)." Ibn Kathir mentioned this in his commentary on the Battle of Khaybar. In his explanation he said: This was judged by the Prophet (peace be upon him) in Makkah. It was one of the judgments he issued in the Opening of Makkah. He said (vol. 4, p. 318): "It is recorded in Sahih Muslim from the Hadith of Sabrah ibn Mi`bid Al-Juhany who said: ﴾Allah's Messenger (peace be upon him) permitted us to contract Mut`ah marriage in the year of the Opening of Makkah, as we entered Makkah, and we did come out of it but he forbade us to do it.﴿ Another narration reads: ﴾Behold, it is forbidden from this very day of yours to the Day of Resurrection...﴿ The narration recorded in Musnad Ahmad and Al-Sunan mentioned that this prohibition took place at the Farewell Hajj. And Allah knows best.

In Sahih Muslim, it is recorded on the authority of Abu Bakr ibn Abu Shaybah on the authority of Yunus ibn Muhammad on the authority of `Abdul-Wahid ibn Ziyad on the authority of Abu Al-`Amis; on the authority of Iyas ibn Salamah ibn Al-Akwa`; on the authority of his father who said: ﴾Allah's Messenger (peace be upon him) permitted us to contract Mut`ah marriage for three nights in the year of Awtas. Then, he forbade it.﴿ Al-Bayhaqy said: 'The year of Awtas is the same year as that of the Liberation of Makkah. Thus, the abovementioned Hadith is the same as that narrated by Sabrah.'" Ibn Kathir added: "Those who proved that Mut`ah marriage was prohibited during the Battle of Khaybar mentioned that it was permitted twice and prohibited twice. This was stated by Al-Shafi`y as well as other scholars. Other scholars stated that it was permitted and prohibited more than twice.

And Allah knows best. Other scholars stated that it was only prohibited once i.e.,

during the Liberation of Makkah."

160 - Illustrating what was stated by `Umar ibn Al-Khattab (may Allah be pleased with him) which might be misunderstood as he was the first to prohibit Mut`ah marriage (temporary marriage for a stipulated period)

It was authentically reported that `Umar (may Allah be pleased with him) said: (There were two types of Mut`ah during the lifetime of the Messenger of Allah, I ban them and shall punish anyone who breaks this rule; one is Mut`ah with women and the other is Mut`ah of Hajj.) This was related by Al-Bayhaqy in Al-Sunan Al-Kubra, vol. 7, p. 206 from the Hadith of Hammam from Qatadah from Ibn Nadrah from Jabir (may Allah be pleased with him) who said: (Ibn Nadrah said to me (Jabir): Ibn Al-Zubayr prohibits Mut`ah marriage whilst Ibn Abbas allows it. I (Jabir) replied: "Allah's Messenger ordered this within my presence. We performed Mut`ah marriage during the lifetime of Allah's Messenger (peace be upon him) and Abu Bakr (may Allah be pleased with him). When `Umar became Caliph, he gave a sermon: 'Allah's Messenger (peace be upon him) is Allah's Messenger, and the Qur'an is the Qur'an. Two types of Mut`ah existed during the lifetime of Allah's Messenger (peace be upon him) I ban them and shall punish anyone who breaks this; one is Mut`ah with women, and I shall stone anyone who does this; the other is Tamattu` Hajj (combining Hajj and `Umrah with a break in between). Separate your Hajj from your `Umrah. This will perfect your Hajj and Umrah.) (Related by Al-Bayhaqy in this wording) He also said: It was narrated by Muslim in his Sahih through another chain of narrators on the authority of Hammam. Explaning it, Al-Bayhaqy said: We have no doubt that Mut`ah was (allowed) during the lifetime of the Prophet (peace be upon him). However, we found that he (peace be upon him) forbade Mut`ah marriage in the year of the Liberation of Makkah

(Part No. 20; Page No. 352)

after permitting it. Then, we did not find that he (peace be upon him) permitted it after forbidding it until he (peace be upon him) met his Lord. Thus forbidding Mut`ah marriage on the part of `Umar ibn Al-Khattab (may Allah be pleased with him) was in accordence with the Sunnah of Allah's Messenger (peace be upon him). Thus we act according to this. On the other hand, we did not find any authentic narration stating that the Prophet (peace be upon him) forbad Tamatu` Hajj. Yet the statement of `Umar (may Allah be pleased with him) indicates that he ordered people to separate Hajj from `Umrah in order that it will be more perfect for them both. Thus, we considered the cause of his prohibition of Tamatu` Hajj to be a contradiction to what is more proper and that

(Part No. 20; Page No. 353)

he preferred Ifrad Hajj (performing Hajj only) to Qiran Hajj (combining Hajj and `Umrah without a break in between). It should not be understood as indicating prohibition. May Allah grant us success!

Shaykh Al-Islam Ibn Taymiyyah said in his book "Minhaj As-Sunnah An-Nabawiyah" (vol. 2, p. 156), regarding the Hadith that mentioned that `Umar forbade Mut`ah marriage: "As for what Rafidah (a Shi`ah group denying the caliphates of Abu Bakr Al-Siddiq and `Umar ibn Al-Khattab and making accusations against them and many other Companions of the Prophet) claimed with regard to `Umar's forbidding of Mut`ah marriage, where they said: Mut'ah marriage continued (to be practiced) during the lifetime of the Prophet (peace be upon him) and during the caliphate of Abu

Bakr and during a part of the caliphate of `Umar, until he ascended the Minbar (pulpit) and said: "There were two acts that were permissible during the lifetime of Allah's Messenger (peace be upon him) and I ban them", it was authentically proven that the Prophet (peace be upon him) ❨forbade contracting Mut`ah (temporary) marriage after permitting it.❩ This wording was narrated by trustworthy narrators in the Two Sahih (authentic) Books of Hadith (i.e. Al-Bukhari and Muslim) as well as other Hadith books. It was narrated on the authority of Al-Zuhry from `Abdullah and Al-Hasan, the two sons of Muhammad ibn Al-Hanafiyyah, from their father Muhammad ibn Al-Hanafiyyah ❨from `Aly ibn Abu Talib (may Allah be pleased with him) who said to Ibn Abbas (may Allah be pleased with him) when he allowed Mut`ah marriage: You are a person who is unconscious: Allah's Messenger (peace be upon him) prohibited the contracting of Mut`ah (temporary) marriage with women and the eating of the flesh of domestic asses on the Day of Khaybar. ❩ This Hadith was reported from Az-Zuhry by the most knowledgeable and memorizers of the Sunnah at that time, by distinguished Imams such as: Malik ibn Anas, Sufyan ibn `Uyaynah and others whose knowledge, uprightness, and memorization are agreed upon. Scholars of Hadith agreed that this Hadith is Sahih (authentic), accepted and free from eccentricity and blemishs. It was also authentically narrated that he (peace be upon him) prohibited the contracting of Mut`ah marriage during the Liberation of Makkah to the Day of Resurrection. Shaykh Al-Islam

(Part No. 20; Page No. 354)

continued: "Ahl-ul-Sunnah wal-Jama`ah (those adhering to the Sunnah and the Muslim main body) follow `Umar and `Aly (may Allah be pleased with them) as well as the other rightly guided caliphs regarding what they narrated from the Prophet (peace be upon him). Shiites have contradicted `Aly with regard to what he narrated from the Prophet (peace be upon him) and followed those who disagreed with him."

It was related by Muslim in his Sahih that Muhammad ibn Rafi` told him that `Abdul-Razzaq said that he was told by Ibn Jurayj that Abu Al-Zubayr said that he heard Jcabir ibn `Abdullah saying: ❨We contracted temporary marriage giving a handful of (dates or flour as a dower during the lifetime of Allah's Messenger (peace be upon him) and during the time of Abu Bakr until `Umar forbade it in the case of `Amr ibn Hurayth. ❩ Regarding this, Ibn Al-Qayyim replied: As for what was proven to be stated by `Umar: ❨"Two issues were allowed during the age of Allah's Messenger, but now I deem them forbidden and will punish anyone who violates this prohibition. These are the Mut'ah marriage and Tamatu` Hajj,❩ we can quote Ibn Al-Qayyim's comment on these two types from his book Zad Al-Ma`ad Fi Hadi Khayr Al-`Ibad, where he stated, regarding the benefits of

(Part No. 20; Page No. 355)

(Part No. 20; Page No. 356)

the Opening of Makkah: "Answering this argument, people have had two replies: (First) Some people argue that it is true that it was `Umar who prohibited these two legal matters, but the Messenger of Allah ordered us to follow the Sunnah of the Rightly-Guided Caliphs! Nevertheless, this group of people have not decided the authenticity of the report of Sabrah ibn Ma`bad entailing that temporary marriage was prohibited in the year of the Liberation of Makkah, because it has been reported by `Abdul-Malik ibn Al-Rabi` ibn Sabrah on the authority of his father on the authority of his grandfather. This transmitter was criticized by Ibn Ma`in. Besides, although Al-Bukhari was in need of the report of `Abd al-Malik, he has evaded recording it in his Sahih. This means that had al-Bukhari deemed this report authentic, he would have certainly used it as proof and recorded it in his Sahih that is considered one of the fundamental books of Islam. It has also been said (by this group) that had the report of Sabrah been true, it would have been known by Ibn Mas`ud who narrated that

the Muslims during the lifetime of the Noble Prophet practiced Mut`ah marriage and provided this Noble Ayah as proof for his claim;

His (Glorified be He) Saying: ﴾O you who believe! Make not unlawful the Tayyibât (all that is good as regards foods, things, deeds, beliefs, persons) which Allâh has made lawful to you, and transgress not. Verily, Allâh does not like the transgressors.﴿ In addition, had the report of Sabarah been authentic, `Umar would not have said: "It was permissible during the time of the Prophet (peace be upon him), but I prohibit them and punish anyone who violates that," rather, he would have said that the Prophet (peace be upon him) prohibited and warned against it. It has also been said that had the report of Sabarah been authentic, Tamatu` marriage would not have been practiced legally during the reign of Abu-Bakr which is considered the continuity of the reign of the Messenger of Allah. (Second) Another group of people have deemed authentic the report of Sabrah for it is substantiated by the report of `Aly (may Allah be pleased with him) that reads: "The Messenger of Allah (peace be upon him) ﴾has prohibited the Mut`ah marriage."﴿ Accordingly, we have to decide that Jabir ibn `Abdullah al-Ansariy did not know about the prohibition because this decision was not circulated among the people up to the reign of `Umar (may Allah be pleased with him) when disputations about temporary marriage arose noticeably. The previous discussion has thus removed any contradiction in the reports regarding the prohibition of temporary marriage. May Allah grant us success!"

Al-Hafizh ibn Hajar Al-`Asqalany said in his book "Fath Al-Bary" (vol. 9, p. 172) citing the words of Al-Bayhaqy: "It was authentically proven that after permitting it, Allah's Messenger (peace be upon him) forbade Mut`ah marriage in the Hadith narrated by Al-Rabi` ibn Sabrah ibn Ma`bad from his father. We did not find that he (peace be upon him) permitted it after forbidding it. Thus forbidding it on the part of `Umar is in concordance with the forbidding of the Prophet (peace be upon him). Then Al-Hafizh ibn Hajar said: "Finally, it should be said that Jabir, as well as those who were reported to have continued practicing Mut`ah, might not have been informed that

the Prophet (peace be upon him) had forbidden it until `Umar, forbade it. Some other lessons that might be utilized from this is that `Umar did not forbid it based on Ijtihad (juristic effort to infer expert legal rulings). Rather, his forbidding was based on the forbidding of Allah's Messenger (peace be upon him). This was declared in the Athar (narrations from the Companions) recorded by Ibn Majjah on the authority of Abu Bakr ibn Hafs from Ibn `Umar who said: "When `Umar became the Caliph, he gave a Sermon: ﴾Allah's Messenger (peace be upon him) gave sanction for contracting Mut`ah marriage for three nights and then forbade it.﴿ Ibn Al-Mundhir and Al-Bayhaqy recorded on the authority of Salim ibn Abdullah ibn `Umar from his father who said: ﴾ `Umar ascended the Minbar (pulpit) and praised and thanked Allah. Then he said: "what about the Men who contract Mut`ah marriage after the Prohpet (peace be upon him) had forbidden it.﴿ In addition, in the Hadith narrated by Abu Hurayrah to which I referred in Sahih Ibn Hiban, Allah's Messenger (peace be upon him) said: ﴾Mut`ah marriage was terminated by commencing marriage, divorce, waiting period and inheritance.﴿ It has another substantiating report on the authority of Sa`id ibn Al-Musayyib, recorded by Al-Bayhaqy.

161- Ibn `Abbas's view when he permitted Mut`ah marriage and whether or not he retracted his view

With regard to what is related from Ibn `Abbas (may Allah be pleased with them both) that he permitted Mut`ah marriage (temporary marriage for a stipulated period), Imam Ibn Al-Qayyim mentioned three times in his book [Zad Al-Ma`ad fi Hady Khayr Al-`Ibad] that Ibn `Abbas held the view that Mut`ah marriage is impermissible when a person can do without it; he only permitted it under the compulsion of necessity. However, when people started practicing it widely, he retracted his view.

(Part No. 20; Page No. 359)

Elaborating on the juristic rulings deduced from the Battle of Khaybar, Ibn Al-Qayyim said: "As for Mut`ah marriage, there is a third view which states that the Messenger of Allah (peace be upon him) never banned it permanently, but only when it was possible to do without it and he only permitted it under the compulsion of necessity. This was the approach adopted by Ibn `Abbas, so upon giving a Fatwa (legal opinion issued by a qualified Muslim scholar) on Mut`ah marriage, he used to say: It is like eating a dead animal, blood or the flesh of swine, which are permissible to eat only when necessity dictates and there is fear of falling into hardship or sin. However, most people did not comprehend his viewpoint and thought that he permitted it absolutely and put it in poetic verses. Seeing that, Ibn `Abbas retracted his view and adopted the view that it is prohibited." Similarly, when he spoke of the subtle points and juristic issues deduced from the Liberation of Makkah, Ibn al-Qayyim said: "Another consideration may be cited here concerning Mut`ah marriage; is it equal in prohibition to other forbidden matters that are absolutely prohibited or is it forbidden when it is possible to do without it and permissible in cases of necessity, as viewed by Ibn `Abbas, who said: I only permit it for a person forced to it by necessity, like dead meat and blood; but when people practiced it widely regardless whether it was a necessity or not and overlooked the legal restraint, Ibn Abbas retracted his view of permission." Again, upon examining the prohibition of Mut`ah marriage while mentioning the legal judgments and decisions of the Prophet (peace be upon him) on marriage, Ibn Al-Qayyim said: "Is it - the prohibition of Mut`ah marriage - permanently fixed or is it like eating the flesh of a dead animal and blood and marrying a slave girl, which may be permitted under the compulsion of necessity and fear of being harmed in religion or body? The latter proposition is the reasoning adopted by Ibn `Abbas when he judged it as permissible under the compulsion of necessity, but when people practiced it widely without restraint, going beyond the condition of necessity, he recanted his Fatwa and retracted it." End of what Ibn Al-Qayyim stated in Zad Al-Ma`ad.

(Part No. 20; Page No. 360)

The author of Tah-dhib Sunan Abu Dawud (a commentary on a Hadith collection classified by jurisprudential themes) said, "He, i.e. Ibn `Abbas (may Allah be pleased with them both), adopted this approach and permitted Mut`ah marriage in cases of irresistible necessity or need, but he did not permit it absolutely. However, when people practiced it widely, he retracted his view. Indeed, he held the view that the prohibition is only applied to a person who is not in need of it (i.e., Mut`ah marriage). Al-Khattaby said: Ibn Al-Sammak related to us from Al-Hasan ibn Salam who related from

Al-Fadl ibn Dukayn from `Abdul-Salam from Al-Hajjaj from Abu Khalid from Al-Minhal from Ibn Jubayr who said: I said to Ibn `Abbas: "Do you see what you did? What consequences your Fatwa incurred? Your Fatwa went everywhere with travelers and poets put it into rhymes". In reply, Ibn `Abbas said: "What did they say?" I said: They said:

I told the old man when he stayed a long time,
O companion, why should you not take the Fatwa of Ibn `Abbas?
[whereby], you will live with a soft, fine, and beautiful woman
until you end your journey and be back home

Ibn `Abbas said: "Truly! To Allah we belong, and truly to Him we shall return! I neither gave this Fatwa nor meant that. I did not permit except the same as what Allah has permitted of the dead animal, blood, and flesh of swine". In his book Ma`alim Al-Sunan, Imam Al-Khattaby criticized

the legal view of Ibn `Abbas. After citing the narration that Ibn Al-Qayyim related from him, he said: This makes it clear that he, i.e. Ibn `Abbas, concluded his view on the grounds of Qiyas (analogical deduction) comparing Mut`ah marriage to eating unlawful food for a person in a case of pressing necessity. However, it is an incorrect Qiyas, because necessity in this case, i.e. Mut`ah marriage, is not equal to a case of needing food that preserves life and whose lack could result in death. Unlike food, Mut`ah marriage is a matter of overcoming desire, which is possible to restrain or stop through Sawm (Fasting) and treatment. Thus, they are not of equal stand with regard to the legally considered necessity." End of Al-Khattaby's speech. It is also cited and even affirmed by Al-Hafizh Abu Bakr Muhammad ibn Musa Al-Hazimy in his book [Al-I`tibar fi Al-Nasikh wal-Mansukh min Al-Athar].

Abu Bakr Al-Jassas is also among those who criticized this view of Ibn `Abbas. He said in his book [Ahkam Al-Qur'an (vol.2, p.148)]: "It is reported from Ibn `Abbas that he made it, i.e. Mut`ah marriage, equal in ruling to consuming a dead animal, flesh of swine, and blood, which is not permissible except in cases of necessity. However, this is impossible (the comparison), because the legally-considered necessity that makes unlawful matters lawful is inexistent in Mut`ah marriage. That is because the legally-considered necessity that permits the consumption of a dead animal and blood is that which could result in the loss of life i.e. when a person does not eat.

We are sure, nevertheless, that a person does not fear death or loss of any of his limbs due to refraining from sexual intercourse. It is not permissible in the state of prosperity and (at the same time) there is no urgent necessity for it, so it is proven that it is forbidden and the saying that it may be permitted under the compulsion of necessity, like eating the flesh of a dead animal or blood, becomes impossible (as it has no place). This is then a paradox and impossible statement. Indeed, this narration ascribed to Ibn `Abbas could most likely be a misreported statement, because he (may Allah be merciful to him) is very well versed in jurisprudence to be unaware of that. Hence, the authentic narration is that which speaks of his prohibiting and preventing people from it after he retracted his former view (of permitting it in cases of urgent necessity)." End of Abu Bakr Al-Jassas' citation. It is due to these discussions cited by Al-Jassas, Al-Khattaby, and Al-Hazimy that some scholars only mention the prohibition (of Mut`ah marriage overlooking the view formerly adopted by Ibn `Abbas).

As for Ibn `Abbas's retraction of permitting Mut`ah marriage, it is stated by many scholars including:

1- Al-Tirmidhy, who said in his Jami` (collection of Hadiths) in the chapter entitled: "Tahrim Nikah Al-Mut`ah [Prohibition of Mut`ah marriage]", vol.5, p. 49; after mentioning that the adopted practice, according to the scholars among the Sahabah (Companions) of the Messenger (peace be upon him) and others, is the prohibition of Mut`ah marriage: It is only ascribed to Ibn `Abbas that he gave some Rukhsah (concession) to practice Mut`ah marriage and then retracted his view and said that the Prophet (peace be upon him) forbade it.

2- Abu Bakr Al-Jassas said in his book [Ahkam Al-Qur'an, vol.2, pp. 148-149]: It is related from Jabir ibn Zayd that Ibn `Abbas retracted

(Part No. 20; Page No. 363)

his view regarding Sarf contracts (exchange of money, currencies, gold, and silver for each other on the condition that delivery and payment must take place at the very time of the sale contract) and Mut`ah marriage. He then said: "Ja`far ibn Muhammad related to us from Hajjaj, from Ibn Jurayj and `Utman ibn `Ata', from `Ata' Al-Khurasany who related Ibn `Abbas's commentary on the Ayah (Qur'anic verse) where Allah (Glorified be He) says: ﴿so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴾ he said: It is abrogated by﴿ O Prophet (صلى الله عليه وسلم)! When you divorce women, divorce them at their 'Iddah (prescribed periods)﴾ Al-Jassas said: This indicates that he drew back his view of permitting Mut`ah marriage". Al-Jassas continued until he said: "To epitomize the sayings of Ibn `Abbas: [First]: He permitted Mut`ah marriage in some reports without confining it to the case of necessity or the like cases".

Second: [He judged it] as equal to eating the flesh of a dead animal in cases of necessity. **Third:** It is forbidden. We also mentioned above the Sanad (chain of narrators) of this saying and his judgment that it is abrogated. His retraction of permitting it finds further support in the report related by `Abdullah ibn Wahb, who said: `Amr ibn Al-Harith related to me that Bukayr ibn Al-Ashaj told him that Abu Ishaq, the freed man of Banu Hashim (the family of the Prophet, peace be upon him) told him that a man asked Ibn `Abbas saying: I was on a journey and in my company there was a slave girl, so I allowed my companions to enjoy her, i.e. to have sexual intercourse with her. (In reply,) Ibn `Abbas said: This is fornication. Al-Jassas also said: It was `Abdullah ibn `Abbas who was known for permitting Mut`ah marriage among the Sahabah (Companions of the Prophet). However, narrations related from him are not in accord; some tell of

(Part No. 20; Page No. 364)

his permitting it depending on the interpretation of the following Ayah: ﴿so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed﴾ We have already stated that the Ayah's indication lends no support to the permission of Mut`ah marriage; on the contrary, the Ayah's indications evidently support the prohibition and forbiddance of it, according to the forms of reasoning that we have cited. It is also reported that Ibn `Abbas applied to it the same ruling applicable to eating the flesh of a dead animal, flesh of swine, and blood, which are impermissible except in cases of urgent necessity. However, this analogy is impossible, because the legal necessity verified in eating unlawful food [need of food for fear of death] is not found in the case of Mut`ah marriage [i.e. need of marriage to enjoy sexual intercourse]. That is because the legally-considered necessity that permits the dead animal and blood is that which could result in the loss of life, i.e. when a person does not eat for a long time, he will die. We are sure, nevertheless, that a person does not fear death or the loss of any of his limbs upon refraining from sexual intercourse. Therefore, it is not permissible in the state of prosperity and [at the same time] there is no urgent necessity for it, so it is proven that it is forbidden and the saying that it may be permitted under the compulsion of necessity, like eating the flesh of a dead animal and blood, becomes impossible [as it has no place].

This is then a paradox and impossible statement. Indeed, this narration ascribed to Ibn `Abbas could most likely be a misreported statement, because he (may Allah be merciful to him) is very well versed in jurisprudence to be unaware of that. Hence, the authentic narration is that which speaks of his prohibiting and preventing from it after he retracted his former view [of permitting it in case of urgent necessity]. [End of Abu Bakr Al-Jassas' citation].

3- Al-Bajy said in his book [Al-Muntaqa Sharh Al-Muwatta' i.e. a commentary on the book of Al-Muwatta` (of Imam Malik), vol. 3, p. 334] when he discussed Mut`ah marriage: Ibn Habib related that Ibn Abbas and `Ata' used to permit Mut`ah marriage, but they drew back their views. Perhaps, `Abdullah ibn `Abbas drew back his view when 'Aly told him. Finally, Allah knows best!

4- Abu Bakr ibn Al-`Araby, as quoted by Al-Qurtuby in his book [Al-Jami` li-Ahkam

Al-Qur'an, vol. 5, p. 132] that he said: Ibn `Abbas used to declare it, i.e. Mut`ah marriage, permissible but it is authentically reported that he retracted his view and then the consensus of scholars was held that it is forbidden.

5- Al-Hazimy said in his book [Al-I`tibar fi Al-Nasikh wal-Mansukh min Al-Athar, p. 141]: As for the statement related to Ibn `Abbas, he used reasoning in his permission of Mut`ah marriage for those who fall under the compulsion of necessity such as those living for a long period without a spouse and suffer poverty while being young. He then withdrew it and stopped giving this Fatwa. The reason underlying his retraction may be referred to the saying of 'Aly (may Allah be pleased with him) to him.

6- Al-Baghawy said in [Sharh Al-Sunnah, vol.9, p.100]: "Some narrations from Ibn `Abbas say that he permits Mut`ah marriage absolutely. It is also said that he made permissibility conditional upon necessity. However, it is more correct that he retracted his view and banned it. Then, all jurists of all Muslim territories unanimously agreed that it is prohibited."

7- Discussing the view of Ibn `Abbas regarding the permission of practicing Mut`ah marriage and consuming the meat of domestic donkeys, Shaykh Al-Islam (a title of superior authority in the religious issues of Islam) Ibn Taymiyyah said in his book [Minhaj Al-Sunnah, vol.2, p. 156]: "It is reported that Ibn `Abbas retracted his view when the textual evidence of prohibition was conveyed to him" End of quote.

However, we see some eminent scholars who do not authenticate the narration of Ibn Abbas's retraction of permitting Mut`ah marriage. For example, Al-Hafizh ibn Kathir in his book [Al-Bidayah wal-Nihaya, vol. 7] after reporting the account of the Battle of Khaybar as cited by the Musnad (Hadith compilation) of Imam Ahmad ibn Hanbal from Sufyan from Al-Zuhry

from Al-Hasan and `Abdullah, the two sons of Muhammad from their father Muhammad that `Aly said to Ibn `Abbas : (The Messenger of Allah (peace be upon him) forbade the practice of Mut`ah marriage and the eating of domestic donkeys during the Battle of Khaybar.) Again, in (vol. 4, p. 194.), he said: However, Ibn `Abbas did not retract his former view of permitting the domestic donkeys and Mut`ah marriage. In respect of the domestic donkeys, he presented an interpretation based on the reasoning that donkeys were their mounts [during this battle, so they were forbidden to eat]. As for Mut`ah marriage, he only permitted it in cases of pressing necessity on journey and applied the rule of prohibition to the case of prosperity and sufficiency. A group of his students and followers adopted his view and this view continued to have fame among the scholars of Al-Hijaz until the time of Ibn Jurayj."

Al-Hafizh Ibn Hajar Al-`Asqalany said in his book [Fath Al-Bary, vol.9, p. 173]: With respect to Ibn

`Abbas, two reports were related from him; one reports his permission of Mut`ah marriage and the other declares his retraction of this view. Ibn Battal said: The people of Makkah and those of Yemen related that Ibn `Abbas permitted Mut`ah marriage. At the same time, other reports through weak Isnads (chain of narrators) tell of his retraction of this view but his permission of Mut`ah marriage is more authentic. End of quote.

The encyclopedic scholar `Aly Al-Qary said in his book: [Mirqat Al-Mafatih Sharh Mishkat Al-Masabih, vol.3, p. 427]: Ibn Al-Humam said: Evidence substantiates that he - Ibn Abbas - did not retract his view when 'Aly said to him: (Do not be hasty, Ibn `Abbas! I heard the Prophet (peace be upon him) forbidding it on the Day of Khaybar and he also banned the consumption of domestic donkeys.) That is because it is reported in the Sahih (Authentic Hadith Book) of Muslim on the authority of `Urwah ibn Al-Zubayr that `Abdullah ibn Al-Zubayr stood up to deliver an address in Makkah saying: (Indeed,

(Part No. 20; Page No. 367)

Allah has made blind the hearts of some people as He has deprived them of eyesight that they give religious verdicts in favor of Mut`ah marriage, while he was alluding to a person (i.e. Ibn 'Abbas), who then called him and said: You are an uncouth person, devoid of sense. By my life, Mut'ah was practiced during the lifetime of the Imam of the righteous (he meant the Messenger of Allah, peace be upon him). Ibn Al-Zubayr then said to him: Just do it yourselves, and by Allah, if you do that I will stone you with your stones!) ... It is also reported by Al-Nasa'y and there is no doubt that Ibn `Abbas was the man meant by the speech of Ibn Al-Zubayr as he lost his sight then. Ibn Al-Zubayr thus said, "Deprived them of eyesight." This incident took place during the caliphate of `Abdullah ibn Al-Zubayr after the death of 'Aly (may Allah honor his face). It is thus proven that he continued to hold its permissibility and did not draw back his view and accept that of 'Aly. End of quote.

In reply to the view of Ibn `Abbas, Al-Tabarany reported in his book [Al-Mu`jam Al-Awsat] from the narration of Ishaq ibn Rashid from Al-Zuhry from Salim that (Someone came to Ibn 'Umar and said: Ibn `Abbas permits Mut`ah marriage. Ibn `Umar said: Allah forbid! I do not think that Ibn `Abbas may do that. It is said, but he really did so! Ibn `Umar said: Ibn `Abbas was but a little boy during the lifetime of the Messenger of Allah (peace be upon him). Ibn 'Umar added: Indeed, the Messenger of Allah (peace be upon him) forbade us from doing it and we were not to commit illicit sexual intercourse!) Judging this report, Al-Hafizh [Ibn Hajar Al-`Asqalany] said in his book [Talkhis Al-Habir]: Its Isnad (chain of narrators) is strong, i.e. reliable. `Abdul-Razzaq also related in the chapter on Mut`ah in his collection of Hadiths entitled [Al-Musannaf, vol. 7, p. 502] from Ma`mar from Al-Zuhry from Salim who said: "It was said to Ibn `Umar: Ibn `Abbas gives a legal verdict permitting Mut`ah marriage.

(Part No. 20; Page No. 368)

He then said: I do not think that Ibn `Abbas may say that. They replied: By Allah, he said so! Ibn `Umar said: By Allah, he would not have dared to say that during the caliphate of 'Umar. In fact, 'Umar was deterring you from these practices and I do not think this practice, i.e. Mut`ah marriage, is other than a form of illicit sexual intercourse." Ibn Abu Shaybah related in the chapter of Nikah Al-Mut`ah [Mut`ah marriage] in his collection of Hadiths entitled [Al-Musannaf, vol.4, p. 293] from `Ubaydah from `Ubaydullah from Nafi` that Ibn 'Umar was asked about the ruling on Mut`ah marriage and he said: It is Haram (prohibited). It was said to him: Ibn `Abbas gives a Fatwa that it is permissible. He replied: [had it been right,] why should he not have uttered that during the caliphate of 'Umar! `Abdul-Razzaq also related in his Musannaf [vol. 4, p. 502] from Ma`mar who said: (It happened that Ibn `Abbas permitted Mut`ah marriage, so Ibn Abu `Amrah Al-Ansary said to him: What is that, Ibn `Abbas? Ibn `Abbas said: It was practiced [by people] at the time of the Imam of the righteous. So, Ibn Abu `Amrah said, May Allah Forgive! Mut`ah marriage was just a concession

given in case of stressing necessity like [the eating of] carrion, blood, the flesh of swine and later Allah gave the decisive and permanent religious ruling (of prohibition)!)

162- Confining the permission of Mut`ah marriage: when it was permitted, and celibacy when traveling

It was stated by Al-Hazimy in his book entitled: "I`tibar fi al-Nasikh wa-al-Mansukh min al-Athar: " This, i.e. permission to practice Mut`ah with women was **first** done while the Muslims

(Part No. 20; Page No. 369)

were traveling. We have no knowledge that the Prophet (peace be upon him) permitted it for them while they were residing in their homes."

Ibn `Abbas (may Allah be pleased with them both) said: "Mut`ah was allowed in the beginning of Islam. If anyone travelled to a new place where he had no acquaintance, then he took a wife there for as many days as he intended to stay that she may take care of his property..., its Sanad (chain of narrators) indicates that it was narrated by Mussa Ibn `Ubaydah Al-Rabadhy from whom it was narrated by Ishaq ibn Rahawyah and Al-Tirmidhy. It was stated by Ishaq ibn Rahawyah : We were told by Rawh ibn `Ubadah by Musa ibn `Ubaydah who said: I heard Muhammad ibn Ka`b Al-Qurazhy narrating from Ibn `Abbas that he said: "Mut`ah with women was allowed in the beginning of Islam. If anyone travelled to a new place where he had no acquaintance then he took a wife for as many days as he intended to stay that she may take care of his property and serve him. The Ayah then was reading: "...so with those of whom you have enjoyed sexual relations for a fixed period, give them their Mahr as prescribed." This went on till the following Ayah was revealed: ﴾Forbidden to you (for marriage) are: your mothers, your daughters﴿

(Part No. 20; Page No. 370)

to His Saying: ﴾desiring chastity, not committing illegal sexual intercourse﴿ Thereafter, Mut`ah with women became forbidden. Allah's (Exalted be He) Saying: "desiring chastity" meant that it is up to them whether to continue their marriage or separate from each other; it is obligatory for them to inherit from each other; but they may not make any other decision (other than that). From this the Hadith was narrated by Abu Bakr Muhammad ibn Mussa Al-Hazimy in his book entitled: "I`tibar fi al-Nasikh wa-al-Mansukh min al-Athar", page 140, Al-Matba`ah al-Muniriyah edition," where he said: I read before Muhammad ibn `Umar Al-Hafizh that we were told by Abu `Aly who heard from Abu Nu`aym who heard from Abu Ahmad Al-`Abdy who heard from `Abdullah ibn Muhammad who heard from Ishaq Al-Hanzhaly that we were told by Rawh ibn `Ubadah, where Al-Hafizh Al-Hazimy narrated the mentioned above Hadith along with both its Sanad (chain of narrators) and Matn (text of a Hadith) we have just mentioned. Then in its Sanad he said: "This is a Sahih (authentic) Sanad except for Mussa ibn `Ubaydah who is known as Al-Rabadhy and he lived in Al-Rabadhah ."

From Ishaq ibn Rahawyah ibn Al-Qayyim also mentioned this narration in his book "Tahdhib Sunan Abu Dawud" as well as the narration of Al-Khattaby mentioned above, where he commented: "Those two narrations reported from Ibn `Abbas explain his intention - i.e. Ibn `Abbas - behind the general narration. Yet Ibn Al-Qayyim neither ranked it as Da`if (weak) as was done by Al-Hafizh Al-Hazimy nor ranked it as a Hadith Shadh (a Hadith narrated by a trustworthy narrator, not in line with the narration of other trustworthy narrators in terms of wording, chain of narrators, or both) that will be mentioned when citing the words of Al-Hafizh Ibn Hajar Al-`Asqalany in addition to ranking its Sanad as Da`if (weak).

(Part No. 20; Page No. 371)

It was stated by Al-Tirmidhy in the chapter on "Forbidding Mut`ah Marriage" in his book entitled "Jam`y Al-Tirmidhy": We were told by Mahmud ibn Ghilan who said: We were told by Sufyan ibn `Aqabah (the brother of Qabisah ibn `Aqabah) who said: We were told by Sufyan Al-Thawry on the authority of Musa ibn `Ubaydah on the authority of Muhammad ibn Ka`b that Ibn `Abbas said: "Mutah was allowed in the beginning of Islam. If anyone travelled to a new place where he had no acquaintance then he took a wife there for as many days as he intended to stay there that she may take care of his property and serve him. This continued till this verse was revealed: (Except from their wives or (the slaves) that their right hands possess) Ibn `Abbas said: Thereafter, all sexual relationships beside these two became forbidden. Commenting on this narration, Al-Hafizh Ibn Hajar Al-`Asqalany said in his book entitled "Fath al-Bary", vol. 9, pp. 171-172, where we cite his very words stated in "Al-Fath": As for what was recorded by Al-Tirmidhy on the authority of Muhammad ibn Ka`b that Ibn `Abbas said: "Mut`ah was allowed in the beginning of Islam. If anyone travelled to a new place where he had no acquaintance then he took a wife there for as many days as he intended to stay there that she may take care of his property...," its Sanad is Da`if (weak) and it is a Hadith Shadh (a Hadith narrated by a trustworthy narrator, not in line with the narration of other trustworthy narrators in terms of wording, chain of narrators, or both) since it contradicts what we mentioned before regarding the wisdom behind permitting it. By this, Al-Hafizh refers to what was related by Al-Bukhari in the chapter on "The Messenger of Allah (peace be upon him) forbade Mu`tah (temporary) marriage later" that comes later in his book of Sahih (authentic) Hadiths, where he said: We were told by Muhammad ibn Bashshar on the authority of Ghundar on the authority of Shu`bah on the authority of Abu Hamzah who said: I heard Ibn `Abbas being asked about Mut`ah

(Part No. 20; Page No. 372)

with women, where a Mawla (freed slave) freed by him said to him: This is only if there is a dire need or when there are few women, or the like, whereupon Ibn `Abbas answered in the affirmative. Another narration reported by Al-Isma`ily states: This was only at the time of Jihad (fighting/striving in the Cause of Allah) when there were few women. With regard to the Hadiths mentioned by Al-Hafizh on explaining this Hadith, i.e. the Hadith recorded by Al-Bukhari, he said: Imam Muslim recorded the narration of Al-Zuhry on the authority of Khalid ibn Al-Muhajir or Ibn Abu `Umrah Al-Ansary who said: It was stated by some man (i.e. Ibn `Abbas whose name was stated by Al-Bayhaqy in the narration he recorded): It (i.e. Mut`ah with women) was permitted in the early days of Islam, for one who was driven to it under the stress of necessity just as (the eating of) carrion, the blood and meat of swine... He added: The Hadith is also substantiated with what was narrated by Al-Khattaby and Al-Fakify on the authority of Sa`id Ibn Jubayr who said: I said to Ibn `Abbas: Your Fatwa has become widely spread among people and was chanted by poets - he means his Fatwa about Mut`ah with women, whereupon Ibn `Abbas said: By Allah, this is not what is meant by my Fatwa; Mut`ah has the same ruling as the meat of dead animals that is only permissible in case of necessity. The Hadith was recorded by Al-Bayhaqy through another chain of transmission on the authority of Sa`id ibn Jubayr, wherein he added: "It is no more than like dead animals, blood, and

the meat of swine."

It was also recorded by Muhammad ibn Khalaf who is well-known as Waki` in his book entitled "Al-Gharar min al-Akhbar" with more Hasan Isnad (a Hadith whose Isnad contains a narrator with weak exactitude, but is free from eccentricity or blemish) than the previous one. He narrated it on the authority of Sa`id ibn Jubayr where he mentioned the mentioned mentioned Hadith, but its end does not include the saying of Ibn `Abbas. In the Hadith reported by Sahl we have just referred to, there is a similar narration. Then Al-Hafizh ibn Hajar said: These narrations substantiate one another. They all indicate that Mut`ah was only permitted due to celibacy in travel, which coincides with the Hadith reported by Ibn Mas`ud at the beginning of the chapter on marriage. Al-Bayhaqy recorded the following hadith reported by Abu Dhar with a Hasan Isnad (a Hadith whose Isnad contains a narrator with weak exactitude, but is free from eccentricity or blemish): Mut`ah was only permitted during times of fighting and fear."

163- Comment on what was related on the authority of Ibn Mas`ud regarding the Temporary Marriage

Regarding what was recorded in the Two Sahih (authentic) Books of Hadith (i.e. Al-Bukhari and Muslim) on the authority of `Abdullah ibn Mas`ud (may Allah be pleased with him) that he said: (We used to participate in the battles carried out by the Prophet (peace be upon him) and we had no women (wives) with us. So we said (to the Prophet peace be upon him). "Shall we castrate ourselves?" But the Prophet (peace be upon him) forbade us to do this and, therefore allowed us to marry a woman (temporarily) by giving her even as little as a garment. Then `Abdullah recited: (O you who believe! Make not unlawful the Tayyibât (all that is good as regards foods, things, deeds, beliefs, persons) which Allâh has made lawful to you, and transgress not. Verily, Allâh does not like the transgressors.))

(Part No. 20; Page No. 374)

It may be argued that reciting this Ayah (Qur`anic verse) by `Abdullah following the Hadith is a confuting reply to those who deem Mut`ah marriage (temporary marriage for a stipulated period) unlawful and an explanation that had it not been lawful, the Messenger of Allah (peace be upon him) would not have permitted it. Yet such conclusion has been refuted as follows:

1: What was stated by Ibn Al-Qayyim in his explanation of the jurisprudence and subtle meanings of the Conquest of Makkah in his book entitled "Zad Al-Ma`ad". He stated that reciting this Ayah after the Hadith on the part of Ibn Mas`ud may be meant to lay the focus on the last part of the Ayah, where Ibn Mas`ud wanted to refute the opinion of those who deemed Mut`ah marriage (temporary marriage for a stipulated period) absolutely lawful and to explain that such a person (doing so) is a transgressor. The Messenger of Allah (peace be upon him) permitted this only due to necessity, when Muslims were in bad need of women but their wives had not accompanied them to the battle. Whoever deems this permissible in residence where there is no lack of women and where one can marry normally, then he has transgressed and Allah (Exalted be He) does not like the transgressors!

(Part No. 20; Page No. 375)

2: What was stated by Ibn Al-Qayyim regarding the judgments of the Messenger of Allah (peace be upon him) on the types of marriage in his book Zad Al-Ma`ad, where he stated: It is obvious that the words stated by Ibn Mas`ud deem it lawful i.e. Mut`ah marriage (temporary marriage for a stipulated period). It is recorded in the Two Sahih (authentic) Books of Hadith (i.e. Al-Bukhari and Muslim) on his authority i.e. Ibn Mas`ud (may Allah be pleased with him): (We used to participate in the battles carried out by the Prophet (peace be upon him) and we had no women (wives) with us. So we said (to the Prophet peace be upon him). "Shall we castrate ourselves?" But the Prophet (peace be upon him) forbade us to do this and, therefore he allowed us to marry a woman (temporarily) by giving her even as little as a garment. Then `Abdullah recited: (O you who believe! Make not unlawful the Tayyibât (all that is good as regards foods, things, deeds, beliefs, persons) which Allâh has made lawful to you, and transgress not. Verily, Allâh does not like the transgressors.)) Yet it is recorded in the Two Sahih (authentic) Books of Hadith (i.e. Al-Bukhari and

Muslim) on the authority of `Aly (may Allah honor his face) that the Messenger of Allah (peace be upon him) prohibited Mut`ah marriage (temporary marriage for a stipulated period). This prohibition must have followed allowing it, or else the ruling would have been abrogated twice and this hadith would not have been used as evidence against Ibn `Abbas (may Allah be pleased with them).

3: The third evidence is the reply of Al-Baihaqy in Al-Sunnan Al-Kubra, part No. 7 p. 201. He stated that another narration of this Hadith of Ibn Mas`ud reads: We used to during our youth. Al-Baihaqy said that he was told by Abu `Abdullah Al-Hafizh that he was told by `Abdullah ibn Muhammad Al-Ka`by that he was told by Muhammad ibn Ayyub that he was told by Abu Bakr ibn Abu Shaybah that he was told by Waki` on the authority of Isma`il ibn Khalid on the authority of Qays ibn Abu Hazim that `Abdullah (may Allah be pleased with him) said: (We used during

our youth... So we said (to the Prophet peace be upon him). "Shall we castrate ourselves?" But the Prophet (peace be upon him) forbade us to do that, and therefore allowed us to marry a woman (temporarily) by giving her even as little as a garment. Then `Abdullah recited: (O you who believe! Make not unlawful the Tayyibât (all that is good as regards foods, things, deeds, beliefs, persons) which Allâh has made lawful to you)) (Related by Muslim in his Sahih on the authority of Abu Bakr ibn Abu Shaybah that Al-Baihaqy said: This narration bears evidence that this happened before the conquest of Khaybar or before the Conquest of Makkah. This is because `Abdullah ibn Mas`ud (may Allah be pleased with him) died in the year 32 A.H. when he was sixty and several years old. The Conquest of Khaybar took place in the year 7 A.H. and the Conquest of Makkah took place at 8 A.H. Since `Abdullah was forty or near forty years old in the year of the Conquest, therefore he was not a young at the time. This is what was stated by Al-Baihaqy in support of the viewpoint of Al-Shafi'y regarding the Hadith narrated by Ibn Mas`ud: (We used to go out for battles with the Messenger of Allah (peace be upon him) and we had no women (wives) with us. So we wanted to castrate ourselves, but the Messenger of Allah (peace be upon him) forbade us to do this, and therefore he allowed us to marry a woman (temporarily) by giving her anything (as Mahr)) Regarding this Hadith, Al-Shafi'y said: Ibn Mas`ud mentioned that the Prophet (peace be upon him) allowed Mut`ah marriage (temporary marriage for a stipulated period) but he did not mention whether this took place either before or after the Battle of Khaybar. It is most likely that the Hadith narrated by `Aly ibn Abu Talib (may Allah be pleased with him) wherein the Prophet (peace be upon him) prohibited the Mut`ah marriage (temporary marriage for a stipulated period) abrogates this Hadith.

4: What was stated by Al-Qurtuby regarding that it did not come to the knowledge of Ibn Mas`ud when stating this opinion that it was abrogated. Once he knew about that later, he changed his opinion. Al-Hafizh Ibn Hajar stated in Fath Al-Bary part 9, p. 119 (in the Chapter: What is Undesirable regarding Celibacy and Castrating Oneself) that Al-Isma`ily said: This was mentioned in a narration by Ibn `Uyaynah on the authority of Isma`il, which was later abrogated. This was also mentioned in a narration by Ma`mar on the authority of Isma`il, which was later abrogated. Out of those who adopted the viewpoint that Ibn Mas`ud stated this opinion while not knowing about its being abrogated was Imam Al-Nawawy in his commentary on Sahih Muslim, where he stated: His saying, i.e. Ibn Mas`ud in his mentioned Hadith that `Abdullah followed (the Hadith) by reciting: (O you who believe! Make not unlawful the Tayyibât (all that is good as regards foods, things, deeds, beliefs, persons) which Allâh has made lawful to you) indicates that he thought that it was lawful, as was thought by Ibn `Abbas, while it had not come to his knowledge that this was abrogated.

Refuting the claim of Ibn Hazm that after the Messenger of Allah (peace be upon him), some of the

Companions (may Allah be pleased with them) and the Tabi`un (Followers, the generation after the Companions of the Prophet) still deemed Mut`ah marriage (temporary marriage for a stipulated period) as lawful:

In the book entitled Fath Al-Bary, Al-Hafidh reported that Ibn Hazm stated: After the Messenger of Allah (peace be upon him), it (i.e. Mut`ah marriage) was still deemed to be lawful by Ibn Mas`ud, Mu`awiayh, Abu Sa`id, Ibn `Abbas, Salamah and Mu`bid (who are the two sons of Umayyah ibn Khalaf,) Jabir and `Amr ibn Harith. It was also reported by Jabir that this was practiced by all the Companions (may Allah be pleased with them) during the lifetime of the Messenger of Allah (peace be upon him), during the Caliphate of Abu Bakr (may Allah be pleased with him) and approximately extended to the last period of the Caliphate of `Umar (may Allah be pleased with him). Ibn Hazm added: Out of the Tabi`un (Followers, the generation after the Companions of the Prophet) find Tawus,

Sa'id ibn Jubayr, `Atta', and all the Fuqaha' (Muslim jurists) of Makkah. However, Al-Hafidh Ibn Hajar Al-`Asqalany commented on this in part 9 of Fath Al-Bari p.174 saying: I stated: All what he went to is subject to question. Regarding Ibn Mas`ud, the evidence of ibn Hazm that he used to do so is the previous Hadith mentioned at the beginning of the Chapter on Marriage.

I explained what was stated by Al-Isma`ily regarding the comment of Ibn Mas`ud himself that explicitly states that he deemed it unlawful. This Hadith was narrated by Abu `Awanah on the authority of Abu Ma`awiyah on the authority of 'Isma`il ibn Abu Khalid, where the end of this Hadith reads: "we used to do so but later this was abandoned." Regarding Mu`awiyah, this was narrated by `Abdul-Razzaq on the authority of Safwan ibn Ya`la ibn Umayyah who stated that he was told by Ya`la that Mu`awiyah approved Mut`ah marriage (temporary marriage for a stipulated period) with a woman from Al-Ta'if. Though its chain of narration is authentic, the narration of Abu Al-Zubayr on the authority of Jabir recorded by `Abdul-Razzaq states that this was in the past. The narration reads: When he entered

Al-Ta'if, Mu`awiyah held Mut`ah marriage (temporary marriage for a stipulated period) with a woman from Banu Al-Hadramy who was called Mu`anah. Jabir said: Then Mu`anah lived till the Caliphate of Mu`awiyah who used to send her a gift every year. Since Mu`awiyah patterned after `Umar (may Allah be pleased with him), then there is no doubt that the first abided by the latter's command prohibiting this. Thus Al-Tahawy said: (`Umar delivered a speech forbidding Mut`ah marriage (temporary marriage for a stipulated period), where he attributed this to the Prophet (peace be upon him). None denied this. This bears evidence that they upheld this prohibition. Regarding Abu Sa`id, it was narrated by `Abdul-Razzaq on the authority of Ibn Juraij that `Ata' said: Some person told me that Abu Sa`id said: Any of us used to hold Mut`ah marriage (temporary marriage for a stipulated period) in return for a glassful of Sawiq (a kind of barley porridge). This Hadith is weak because one of its narrator is missing. Moreover, it does not explicitly state that this was after the Prophet (peace be upon him). As for Ibn `Abbas, we previously mentioned his Hadith and that there is a disagreement whether he changed his opinion or not.)

Salamah and Mu`bid, are the same story as there is disagreement whether it happened to either of them. `Abdul-Razzaq narrated with a Sahih Sanad (a good chain of narrators) on the authority of `Amr ibn Dinar on the authority of Tawus that Ibn `Abbas said: `Umar was amazed to see Um Arakah pregnant. Being asked by `Umar, she said: Salamah Ibn Umayyah took me in Mut`ah marriage (temporary marriage for a stipulated period). He also related from the way of Abu Al-Zubayr on the authority of Tawus who named the husband "Mi`bad ibn Umayyah". His evidence regarding Jabir is that the latter stated: "we used to practice it", which I previously explained. It is

stated in the narration of Abu Nadrah from Jabir recorded by Imam Muslim "`Umar forbade us and we practiced it no more". If his saying: "we practiced it" includes

(Part No. 20; Page No. 380)

all the Companions (may Allah be pleased with them), then his saying: "then we practiced it no more" includes all the Companions, which means that they unanimously agreed on this. We have clearly explained that he depended on the authentic Hadiths we presented. Regarding `Amr ibn Hurayth and also his saying: "This was narrated by Jabir to be practiced by all the Companions," is strange. Rather, Jabir said: "We practiced it", which does not indicate that it was practiced by all the Companions, rather this proves that it was practiced by only Jabir himself. Regarding what he mentioned about the Followers, this is recorded by `Abdul-Razzaq on their authority with a Sahih Sanad (a good chain of narrators). It was authentically reported from Jabir in the book of Sahih Muslim "we practiced it" with Allah's Messenger (peace be upon him). Then `Umar forbade us and we practiced it no more. This refutes the claim of Ibn Hazm that Jabir was amongst those who continued to deem it lawful. Moreover, Ibn Hazm acknowledged that it is unlawful because it was authentically reported that the Prophet (peace be upon him) said: (It is prohibited until the Day of Resurrection.) He said that this Hadith makes it impossible that the prohibition was abrogated. And Allah knows best! This is the end of what Al-Hafizh stated in Fath Al-Bary.

Ibn Hazm mentioned in his book entitled Al-Muhalla part 9 p. 519: Asma'

(Part No. 20; Page No. 381)

bint Abu Bakr (may Allah be pleased with them both) was one of those Companions who continued to deem Mut`ah marriage (temporary marriage for a stipulated period) lawful after the Messenger of Allah (peace be upon him). He also mentioned another narration stating that `Umar Ibn Al-Khattab denied the permissibility of Mut`ah marriage (temporary marriage for a stipulated period) except with the presence of two just witnesses and that He permitted it by the witness of two just witnesses. But Ibn Hazm did not explain in detail any of the two matters. Rather, he mentioned them in his book entitled "Talkhis Al-Habir fi Takhrij Ahadith Al-Rafi`y Al-Kabir. He only mentioned the chain of narration regarding what he reported from Asma', where he said in part 3 p. 59: Regarding what he mentioned -i.e. Ibn Hazm- about Asma', it was narrated by Al-Nasa'y by way of Muslim Al-Qurry who said: I entered the house of Asma' bint Abu Bakr and asked her about Mut`ah marriage (temporary marriage for a stipulated period), whereupon she said: we practiced it during the lifetime of Allah's Messenger (peace be upon him). This narration is not refuted. Therefore, I want to mention the evidence Ibn Hazm relied on in claiming that there is another narration from `Umar ibn Al-Khattab wherein `Umar judged Mut`ah marriage (temporary marriage for a stipulated period) unlawful unless witnessed by two trustworthy men and permitted it by the witness of two trustworthy witnesses. Refuting the two narrations, I can say that regarding the narration attributed to `Umar in this regard, it is recorded in the volume of `Abd Al-Razzaq, part 7, pp. 500-501. It is narrated that Ibn Juraij said: I was told by `Abdullah ibn `Uthman ibn Khuthaym that Muhammad ibn Al-Aswad ibn Khalaf told him that `Umar ibn Hawshab approved Mut`ah marriage (temporary marriage for a stipulated period) with the bondmaid of Bakr from Banu `Amir ibn Lu'ay. The bondmaid mentioned this to `Umar. Being asked by `Umar, she said: she was given into Mut`ah marriage (temporary marriage for a stipulated period) to `Umar ibn Hawshab. Being asked, the husband acknowledged this. `Umar asked: Who witnessed it? The husband replied: I do not know; it may be her mother, sister

(Part No. 20; Page No. 382)

or her brother and mother. `Umar ascended the pulpit and said: Why do some people practice Mut`ah marriage (temporary marriage for a stipulated period) without having just men to witness the marriage contract. I will punish the husband not putting an end to this marriage. `Umar ibn Hawshab said: `Umar ibn Al-Kattab told me this when I was sitting by his pulpit. `Umar ibn Hawshab added: People received this from him. This chain of narration contains Mohammed ibn Al-Aswad ibn Khalaf about whom Al-Hafizh Al-Dhahaby wrote in the book entitled Mizan Al-I'tidal part 3, p. 485: Neither he nor his father is known. He is only mentioned in the Hadiths narrated by `Abdullah ibn `Uthman ibn Khuthaym. Regarding the narration from Asma', this was refuted by Al-Husayn ibn Ahmad Al-Siyaghy in the book of Al-Rawd Al-Nadir fi Sharh Majmou` Al-Fiqh Al-Kabir part 4, p. 218, where he stated: This narration contains no further addition than relating what happened during the lifetime of the Prophet (peace be upon him). The context does not indicate that she considered it lawful. In his book of Sahih (authentic) Hadith, Imam Muslim said: It was narrated from Muhammad ibn Hatim on the authority of Rawh ibn `Ubadah on the authority of Shu`bah that Muslim Al-Qurry said: (I asked Ibn `Abbas (may Allah be pleased with them both) about Tamattu' in Hajj

and he permitted it, whereas Ibn Al-Zubayr had forbidden it. He (Ibn 'Abbas) said: This is Um Ibn Al-Zubayr who states that Allah's Messenger (peace be upon him) had permitted it, so you better go to her and ask her about it. He (Muslim al-Qurri) said: So we went to her and she was a large blind women and she said: Verily Allah's Messenger (peace be upon him) permitted it.) This Hadith was narrated to us by Ibn Al-Muthanna on the authority of `Abdul-Rahman (the Hadith). This Hadith was narrated to us also by Ibn Bashshar on the authority of Mohammed (i.e. ibn Ja`far) on the authority of Shu`bah with the same chain of narration. Regarding the Hadith narrated by `Abdul-Rahman, it contains the Arabic word "Mut`ah", where he did not state that it is Tamattu` Hajj (combining Hajj and `Umrah with a break in between). As for Ibn Ja`far, he said: Shu`bah said: Muslim al-Qurri said: I do not know whether what is meant is Tamattu` Hajj (combining Hajj and `Umrah with a break in between) or Mut`ah marriage (temporary marriage for a stipulated period). Consequently, the term "Mut`ah marriage (temporary marriage for a stipulated period)" mentioned in the narration of women on the authority of Muslim al-Qurri is subject to question. Out of the strange opinions adopted by Ibn Hazm is his claim stated in Al-Muhalla regarding Mut`ah marriage (temporary marriage for a stipulated period) wherein he contradicts `Ali, `Umar, and ibn Al-Zubayr based on no valid evidence, and in spite of the explicit Sahih (authentic) texts reported from them prohibiting it.

164- **The answer to what was ascribed to `Ata', Ibn Juraij, Malik ibn Anas, Al-Shafi`y, Ahmad ibn Hanbal and Ibn Jarir concerning their permitting Mut`ah marriage (temporary marriage for a stipulated period):**

Regarding what was reported from `Ata' that he permitted Mut`ah marriage; Al-Bajy mentioned in "Al-Muntaqa" volume three, p. 334, when talking about Mut`ah what reads: Ibn Habib narrated that Ibn `Abbas and `Ata' used to permit Mut`ah marriage then they recanted this. As for the narration of Al-Khattab on the authority of Ibn Jurayj regarding permitting Mut'ah marriage,

(Part No. 20; Page No. 384)

It was reported by Abu `Uwanah in his Sahih as mentioned in "Talkhis Al-Habir" by Al-Hafizh Ibn Hajar, volume 3, p. 160; it was narrated on the authority of Ibn `Uwanah that he told them in Al-Basrah: "Witness that I have recanted this" and that was after he given them eighteen sound Hadith. Even if he had not recanted, the matter is what was declared by Al-Awza`y, for it was mentioned by Al-Hakim in the second type among the types included in his book: "Ma`rifat `Ulum Al-Hadith". p. 65: "I heard Abul `Abbas Muhammad ibn Ya`qub saying: We were informed by Al-`Abbas ibn Al-Walid Al-Bayruny who said: Abu `Abdullah ibn Bahr told us: I heard Al-Awza`y saying: five opinions belonging to the people of Iraq are to be avoided or abandoned. And five opinions belonging to the people of Hijaz are to be treated the same manner. The five opinions of the people of Iraq are: the permissibility of drinking intoxicants, eating at dawn during Ramadan, delaying `Asr (Afternoon) Prayer until the shadow of an object becomes fourfold greater than it, escaping from the battle and not obligating Jumu`ah (Friday) Prayer unless it is established in any of the seven territories. While the rejected opinions of the people of Hejaz are: the permissibility of listening to music, combining two Salahs (Prayer) with no excuse, entering into Mut`ah marriage, taking one dirham or one dinar for two hand to hand, having intercourse with women through their backsides. Amongst those who resorted to this when replying to Ibn Juraij regarding permitting Mut`ah marriage was Al-Hafizh ibn Hajar in "Talkhis Al-Habir", he also stated: One of those who are also known for permitting it, i.e., Mut`ah marriage, is Ibn Juraij the jurist of Makkah. This is why Al-Awza`y said about what was narrated by Al-Hakim in "`Ulum Al-Hadith": "Five (opinions) of the people of Hejaz" including Mut`ah marriage, regarding the declaration of the people of Makkah and having sexual intercourse with

women through their backsides regarding the saying of the people of Madinah.

(Part No. 20; Page No. 385)

As for what was narrated by some of those who belong to the Hanafy Madh-hab (school of Jurisprudence) on the authority of Malik ibn Anas concerning allowing Mut`ah marriage; it was tracked by Imam Ibn Daqiq Al-`Eid in "Ihkam Al-Ahkam Sharh `Umdat Al-Ahkam" after asserting that the jurists of all territories agreed on the prohibition, he mentioned in volume 4. p. 194: "What was reported by some Hanafy scholars on the authority of Malik regarding his permitting it is definitely wrong. Most jurists restricted the prohibition to the temporary contract, but Malik surpassed the prohibition to fixing the time of marriage even if it was not mentioned in the contract, he said: " if a man conditioned the Talaq (divorce pronounced by the husband) of his wife on a certain time then by all means will come, it is considered given now." His followers justified this by considering this a kind of fixing a time for marriage, giving it the same ruling as Mut`ah marriage" These are the statements of Ibn Daqiq Al-`Eid. It was summarized by Al-Hafidh ibn Hajar Al-`Asqalany in :"Fath Al-Bary", volume 9, p. 173 in which he said: Ibn Daqiq Al-`Eid said: What was related by some Hanafy scholars on the authority of Malik on permitting it is incorrect, for The Maliky scholars exaggerated in preventing temporary marriage until they nullified fixing the duration of marriage by saying: if it is conditioned on a time that must come, it is considered to be given now, since it is a fixing for the time of marriage, which is to be considered Mut`ah marriage (temporary marriage for a stipulated period).

As for what was reported on the authority of Al-Shafi`y regarding the permissibility of Mut`ah (temporary marriage for a stipulated period), Imam Ibn Kathir mentioned in "Al-Bidayah wal-Nihayah" volume 5. p. 194 that: Some of those who compiled books about the permissibility tried to cite from a statement of Imam Al-Shafi`y to this effect, i.e., what was related on the authority of Ibn `Abbas on permitting Mut`ah, and this is not correct, and Allah knows best!

(Part No. 20; Page No. 386)

Regarding what was conveyed from Ibn Mansur that he asked Ahmad ibn Hanbal about the Mut`ah marriage, he said: avoiding it is preferable for me. His saying: "what is apparent in this regard is the reprehensibility not prohibition", Ibn `Aqil said that Imam Ahmad recanted that. Further, Taqy Al-Din also said: " Imam Ahmad (may Allah be merciful with him) in this words did not deny prohibition". The owner of "Al-Muharrar" declared that the marriage is to be lawful and the timing should be abolished. Ibn Qudamah also replied to this in (Al-Mughny) volume 6, p. 644 by saying: "Some Sahabah (Companions of the Prophet) other than Abu Bakr (may Allah be pleased with him) prohibited this". He added that there is only one relation denoting prohibition regarding this case, and this is the opinion of the majority of Prophets Companions and Muslim jurists. Among those who prohibited it were `Umar, `Aly, Ibn `Umar, Ibn Mas`ud, and Ibn Al-Zubayr. Ibn `Abdul-Bar said:" Those who view the prohibition of Mut`ah were Malik, from the people of Madinah, Abu Hanifah among the people of Kufah, Al-Awza`y among the people of Sham (the Levant), Al-Layth among the people of Egypt, Al-Shafi`y and the compilers of Athar (narrations from the Companions).

Imam ibn Kathir in "Al-Bidayah wal Nihyah" replied to the saying about the narration of Imam Ahmad by saying in volume 4, p. 194: It was reported from Imam Ahmad ibn Hanbal a narration similar to that of Ibn `Abbas and it is weak.

As for the statement of Al-Shawkany in "Nayl Al-Awtar" volume 6, p. 1306, the `Uthmani edition in Egypt: It was also related on the authority of Ibn Jarir that he permitted this. However, he was mistaken and the correct view is "Ibn Jurayj" as in the text written in "Al-I`tibar" by Al-Hazimy from which Al-Shawkany copied the statement including the mistake.

One of those who discovered that mistake was Shaykh Muhammad Najib Al-Muti`y in the fifteenth volume of "Sharh Al-Muhadhdhab" which is the fourth volume of his completion to the Sharh, he said on page 141: "The name of Ibn Juraij was mistakenly replaced in "Nayl Al-Awtar" by Ibn Jarir. However, the right name is what we mentioned, i.e., Ibn Juraij "but it was missed by Al-Muti`y and he did not mention this mistake, rather, it occurred in the cited phrase.

165- Definition of Mut`ah marriage

In his book entitled "Mirqat Al-Mafatih Sharh Mishkat Al-Masabih" vol. 3 p. 422, Shaykh `Aly Al-Qar`y, Bombay edition, wrote: "Mut`ah marriage is when a man marries a woman for a specific length of time in return for a particular amount of money."

In his book entitled Al-Muntaqa", Al-Bajy explained the Hadith which was narrated on the authority of Ibn Abu Talib: (The Messenger of Allah (peace be upon him) forbade Mut`ah marriage on the Day of the Battle of Khaybar and he forbade the eating of donkey's meat.") The Mut`ah marriage (temporary marriage for a stipulated period) which is meant in this Hadith is temporary marriage, when a man marries a woman for a certain period of time whether it is a day, a month or a certain period of time after which the marriage becomes invalid. This is the opinion of Ibn Al-Mawwaz and Ibn Habib. Ibn Habib added: Or when a man marries a woman for a fixed time depending on his length of stay in the town.

(Part No. 20; Page No. 388)

Al-Bajy said: "Mut`ah marriage is when a man intends to marry a woman for a fixed period of time." It was reported by Muhammad from Malik that this type of marriage is permissible, however, it is against the people's ethics. Ibn Habib said: "marriage meets the principle pillars without a condition, but Mut`ah marriage (temporary marriage for a stipulated period) is when a period is stipulated to end the marriage." Malik said: "a man may marry a woman for a fixed period, but he may be pleased with her so he keeps her. Likewise, a man may divorce his wife after the contract of a permanent marriage, if he does not like her. This does not invalidate the marriage, however, stipulating a period is what invalidates the marriage."

In his book entitled "Al-Kafy", vol. 2, p. 533, Ibn `Abdul-Bar said: "Mut`ah marriage is an invalid marriage in which a man marries a woman in return for a specified compensation and for a fixed time whether it is a day, a month or a certain period of time provided that the contract of marriage ends upon expiration of this fixed period."

Imam Abu `Abdullah Muhammad ibn Ahmad Al-Ansary Al-Qurtuby explained the following Noble Ayah (Qur'anic verse): (so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed) In his book entitled Al-Jami` li Ahkam Al-Qur'an,

(Part No. 20; Page No. 389)

"Abu `Umar said: "Scholars of the Salaf (Righteous Predecessors) and later generations have no disagreement that Mut`ah (temporary marriage for a stipulated period) is a type of marriage for a set period of time, neither of the spouses has the right to inherit from each other and man and woman separate when the time expires."

Ibn `Atiyyah said: "Mut`ah marriage (temporary marriage for a stipulated period) is when a man marries a woman in the presence of two witnesses and the consent of the woman's Waliy (a legally accountable person representing a woman seeking marriage) for a fixed term. The two spouses do not inherit from each other and he must give her the amount of money they agreed upon. After the pre-set time, they are no longer a husband and wife. The child born out of this marriage is no doubt

attributed to its father. If the woman is not pregnant, it is permissible for her to marry another person. In his book entitled Al-Nahhas said that the child born out of this marriage is not attributed to its father. Al-Nahhas said that Mut`ah is when a man marries a woman for a day or a certain period, but `Iddah (woman's prescribed waiting period after divorce or widowhood), inheritance, divorce, and two witnesses to the marriage contract are not included, this is Zina (adultery) and it was never permitted in Islam. For this, `Umar says: "If a man brought me the report that he contracted Mut`ah marriage, I would stone him to death."

In his book entitled Al-Um, vol. 5 p. 71, under the title of: (Nikah Al-Muhallil and Al-Mut`ah, i.e. marriage contracted for the sole purpose of legalizing remarriage between an irrevocably divorced couple and temporary marriage) Al-Shafi`y said: "The meaning of the prohibited form of Mut`ah marriage is: every marriage that was contracted for a certain duration whether short or long, such as a man saying to a woman: I will marry you for a day, ten days or a month. Or he may say: I will marry you

until I leave this country, or until I have sexual intercourse with you so that you become lawful for your husband who divorced you thrice. This is not the case with true marriage which is based upon permanency and ends naturally. As for Tahlil marriage (a marriage contracted for the sole purpose of legalizing remarriage between an irrevocably divorced couple) which is reported that the Prophet (peace be upon him) cursed, it is a form of Mut`ah marriage because there is no intent to take her as a wife forever; but they agree to end the marriage after having sexual intercourse whether this takes place at once, or later." The general rule is: A husband stipulates to end the marriage after having sexual intercourse and when he does, the marriage ends. He says: I will have sex with you ten times and after which the marriage will be terminated. Likewise when he says: I will have sex with you so that you will become lawful to your husband, after that the marriage becomes nullified. It is the same as saying: I will rent this house from you for ten (days, months, years) or I will rent this bondmaid for one month. When the period of one month is over, the contract will be terminated as to say: I will rent this house from you as long as I stay in this country; once he leaves the country, the contract becomes void. If a person contracts one of these forms of marriage, it will be Mut`ah marriage. The same is also applied to every marriage that was contracted for a certain duration or unlimited duration. Marriage becomes null and void and there are no rulings applicable to this marriage such as inheritance, divorce, Zhihar (a man likening his wife to an unmarriageable relative), Ila' (husband's oath not to have intercourse with his wife for four months or more) or Li`an (allegation of adultery against a wife, accompanied by mutual invoking of Allah's Curse/Wrath if lying) except if they beget a child. If he does not have sex with her, no Mahr (mandatory gift to a bride from her groom) is due. If he has sex with her, a suitable Mahr is due in the case where they did not agree on a specific Mahr. She will observe `Iddah (woman's prescribed waiting period after divorce or widowhood) with no alimony even if she is pregnant.

If he marries her properly afterwards, he may divorce her three times and the previous divorce is not counted.

Al-Shafi`y said: "If a man visits a country and wants to marry a woman and the intention of one or both of them and her Waliy is that the duration of their marriage is two days or more, and didn't set this as a condition, their marriage contract is valid. Their intention doesn't invalidate marriage because people do not articulate their intentions. A man may intend to do something but he may do it or not so that action is different from the intention. Likewise, if two intend to get married for a fixed period or this was the intention of one of them to make her lawful for her ex-husband to remarry, their marriage contract is valid. The intention of the Waliy or other than the Waliy (if he marries the

woman) does not affect the marriage contract as long as he does not stipulate a condition to make the marriage null and void.

Al-Shafi`y also said: "If they mutually agree that he keeps her only for a limited number of days, during his stay in the country, or until he has intercourse with her. I disapprove of such an agreement. When considering the marriage contract, if no conditions were stipulated, it is valid and both enjoy the rights of spouses. If these conditions were stipulated, the contract is null and void,

for it is like Mut`ah marriage. Any valid marriage that was consummated makes both the man and woman (if she was a free woman) Muhsan (someone in a state of fortification against illegal sexual intercourse outside marriage by virtue of valid current or previous marriage), the woman lawful to her irrevocably divorced ex-husband, and he must give her full Mahr (mandatory gift to a bride from her groom). These rules come into effect if consummation took place by merely penetrating the vulva. Al-Shafi`y also said: "Any invalid marriage neither makes a man or a woman Muhsan nor makes a woman lawful to her irrevocably divorced ex-husband. If they consummated their marriage, he must pay her the Mahr by virtue of the sexual intercourse that became lawful for him."

Al-Muaffaq ibn Qudamah said in his book entitled Al-Mughny, vol. 6, p. 644: "Mut`ah marriage is when a man marries a woman for a determined period. For instance, when a man says: I will give you my daughter in marriage for a month, a year, end of the season, the arrival of the pilgrims, etc.; whether the period expires or not."

Ibn Hazm defined Mut`ah marriage in his book entitled "Al-Muhalla", vol. 9, p. 519 as: "It is a marriage for a fixed term."

In his book entitled "Al-Rawd Al-Nadir Sharh Majmou` Al-Fiqh Al-Kabir", Al-Hasan ibn Ahmad Al-Siyaghy said in vol. 4, p. 214: "Mut`ah marriage is a fixed term marriage whose duration may be defined or not and usually lasts up to forty-five days. It automatically ends upon completion of its term for the woman who has reached menopause, two menstrual cycles for a menstruating woman, and four months and ten days on the death of the husband. Mahr, Nafaqah (obligatory financial support), inheritance, or `Iddah (woman's prescribed waiting period after divorce or widowhood) to make sure that she is not pregnant are not included in this form of marriage. A child born out of this marriage is not attributed to the father unless it was stipulated and

the Mahram (spouse or unmarriageable relative) relationship is established upon this marriage. Al-Siyaghy said that this was mentioned in some books of Al-Imamiyyah."

Al-Qady Abu Al-Walid Al-Bajy said in "Al-Muntaqa Sharh Al-Muwatta'" vol. 3, p. 355: "It was narrated by Ibn Muzayyn from `Isa ibn Dinar from Yahya ibn Yahya on the authority of Ibn Nafi` that anyone who engages in Mut`ah marriage should be stoned if he is Muhsan (someone in a state of fortification against illegal sexual intercourse outside marriage by virtue of valid current or previous marriage), otherwise he should be lashed. Ibn Habib reported from Mutarrif, Ibn Al-Majashun, and Asbagh that Ibn Al-Qasim said: He should not be stoned, if he concluded marriage knowing that it is reprehensible, rather he should be severely punished; but not to the extent of inflicting Had (ordained punishment for violating Allah's Law). It was narrated that Malik said that he did not hold the view of inflicting Had (ordained punishment for violating Allah's Law) on anyone who engaged in Mut`ah marriage but he should be punished if he knows that it is reprehensible. `Isa ibn Dinar said: It was reported that `Umar ibn Al-Khattab (may Allah be pleased with him) said that to the people, and moreover, his Khutbah is circulated and his positions are transmitted and nobody argued with him for that or even dsiagreed with him. Asbagh used the following report of Ibn Muzayyn as evidence: Any marriage that is not prohibited by the Sunnah or the Qur'an, should not require that Had (ordained

punishment for violating Allah's Law) be inflicted upon one who deliberately engages in it but he should be punished. Any marriage prohibited by the Qur'an, should have Had (ordained punishment for violating Allah's Law) inflicted upon him if done deliberately. This is the opinion of Ibn Al-Qasim. Al-Qady Abu Al-Walid (may Allah be pleased with him) said: "I believe that any marriage prohibited by the Sunnah and Ijma` (consensus of scholars), (ordained punishment for violating Allah's Law) should be inflicted upon any one who engages in such marriage as in the marriages prohibited by the Qur'an.

If a scholar who held a different opinion passed away and there was Ijma` (consensus of Muslim scholars) on one of his opinions after his death and before he withdraws his opinion, scholars such as Al-Qady Abu Bakr said that Ijma` should be concluded by the death of the scholar who held the opposing opinion. Therefore, the difference of opinion remains and the person who conducts such marriage should not be punished. Another group of scholars said that Ijma` is concluded by the death of both parties. Thus, there is Ijma` on the prohibition of Mut`ah marriage for none of those who hold the view of its permissibility is alive and the person who conducts such marriage should be punished. I support this opinion: `Abdullah ibn `Abbas did not take back his opinion. The fact that the child born from this marriage is acknowledged as a legal progeny indicates that Ijma` was not concluded on its prohibition for if there was Ijma`, the child would not have been attributed to the father. And Allah knows best! This is the opinion of Al-Bajy in his explanation to the report of Malik from Ibn Shihab on the authority of `Urwah ibn Al-Zubayr: "It is narrated that Khawlah bint Hakim said to `Umar ibn Al-Khattab (may Allah be pleased with him): "Rabi`ah ibn Umayyah practiced Mut`ah with a woman and the woman has become pregnant from him." `Umar ibn Al-Khattab became angry and said: "This is Mut`ah. Had I ruled, I would have stoned him."

Al-Bajy said: if Mut`ah marraige takes place, it should be annulled. Shaykh Abu Al-Qasim added: Before and after consummation of the marriage because the Prophet (peace be upon him) forbade contracting Mut`ah marriage. Forbiddance denotes invalidity. Thus, such a marriage contract is null and void and

it should be annulled before or after consummating the marriage, as in the case of contracting marriage without the presence of a Waliy."

Ibn `Abdul-Bar said in his book "Al-Kafy", vol. 2, p. 533: "Mut`ah marriage is Batil (null and void) and should be annulled. It is when a man marries a woman in return for a particular amount of money for a specific length of time whether a day, month, etc. The spouses separate when the fixed term is over without divorce; whether before or after the consummation of marriage. Once the marriage is consumated, the fixed Mahr is due, according to Malik. If the man does not fix a Mahr, or he fixes that whose value is not regarded as an appropriate Mahr (according to Malik), the amount of Mahr is to be determined on the basis of that given to her peers, no punishment of establishing illicit sexual relation is to be exacted (as the marriage contract is valid), children born from this marriage are acknowledged as legal progeny, and the woman must observe a full term of` Iddah (in case of divorce of death or her husband). According to Malik, Nahariyyah carries the same ruling as Mut`ah marriage in terms of legal progeny of children born from this marriage and the observation of `Iddah (in case of divorce of death or her husband). "Nahariyyah" is the woman whose husband stipulates that he only wants to see her during the daytime, but not at night." Al-Qurtuby said in "Al-Jami` li Ahkam Al-Qur'an", vol. 5, pp. 132-133: "Scholars held different views with regard to one who conducts Mut`ah marriage, should a penalty be inflicted upon him and the child born from this marriage should not be acknowledged as legal progeny or should he be punished and acknowledge the child as a legal progeny? There are two different views, however, he should be punished and the

child should be attributed to the father according to the opinion of some scholars in spite of its being prohibited. This indicates that the Mut`ah marriage used to have the same ruling as the valid marriage except for its fixed period and inheritance. Al-Mahdawy reported that Ibn `Abbas said: Mut`ah marriage used to be conducted in absence of a Waliy or witnesses. This narration is considered weak.

Ibn Al-`Araby reported: Ibn `Abbas said that Mut`ah marriage was permissible but it was proved that he withdrew his opinion. Thus, there is a consensus on forbidding Mut`ah marriage. If a person conducts it, he should be stoned according to the Maliky Madh-hab (School of Jurisprudence). In another report from Malik: "A person who conducts Mut`ah marriage should not be stoned because of its unlawfulness but because the Maliky scholars hold another opinion: Is what is forbidden by the Sunnah similar to that which is forbidden by the Qur'an, or not? According to the narration of some scholars of Madinah that Malik said: They are not alike. This narration is considered weak."

Ibn Qudamah said in "Al-Mughny", vol. 8, pp. 183-184: "If sexual intercourse occurs in a doubtful marriage, such as Mut`ah marriage, a penalty should not be imposed." This is the opinion of most scholars for the permissibility of having intercourse in such marriage is a doubtful matter. Ordained punishments are not imposed on such doubtful matters. Ibn Al-Mundhir said: Every scholar from whom we received knowledge agreed that no prescribed punishments are imposed on doubtful matters."

Allah is the Grantor of success! Allah Alone is Sufficient for us, and He is the Best Disposer of Affairs!

166- Encouragement to marry

From `Abdul-`Aziz ibn `Abdullah ibn Baz to our honorable brother the questioner

As-salamu `alaikum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

With reference to your request for Fatwa (legal opinion issued by a qualified scholar) numbered (1790) dated 11/5/1407 A.H., registered in the Department of Scholarly Research and Ifta', in which you pose several questions. I would like to inform you that offering Salah without Iqamah (call to start the Prayer) is valid, as this act is one of the collective obligations, but a person should not intentionally abandon it. We also recommend you to hasten to marry as it leads to fortifying oneself and lowering the gaze. It is authentically reported that the Prophet (peace be upon him) said: ('O young people! whoever amongst you is able to marry, let them marry, for this will lower their gaze and fortify them, and whoever is not, let them fast, for Sawm (fast) is a protection for them (against fornication)) What your mother has said regarding your inabilty to assume the responsibility of marriage

or to provide for your wife is not a reason to refrain from marriage; for Rizq (sustenance) is in the Hands of Allah. He (Exalted be He) says: (And whosoever fears Allâh and keeps his duty to Him, He will make a way for him to get out (from every difficulty).) (And He will provide him from (sources) he never could imagine.) The monthly salary you have mentioned will suffice you, Insha`a Allah (if Allah wills). Further, you should try to convince your mother and gain her consent. But, if she insists and refuses, you do not have to obey her in refraining from marriage while you are in need of it; obedience is only in Ma`ruf (that which is judged as good, beneficial, or fitting by Islamic law and Muslims of sound intellect). Apart from this, what your teacher mentioned regarding that being in the state of Taharah (ritual purification) on touching the Mus-haf (Arabic Qur'an) does apply to school students is incorrect; for the commandment of stipulating Taharah (ritual purification) was prescribed generally, therefore, its ruling comprises anyone who touches the Mus-haf. The Permanent Committee for Scholarly Research and Ifta' previously issued several Fatwas (legal opinion issued by a qualified Muslim scholar) on some of your questions, you will find attached herewith a copy of them. I hope they will be sufficient, Insha'a Allah (if Allah wills). May Allah grant everyone success to do whatever pleases Him! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

General Chairman of the Departments of Scholarly Research,

Ifta', Da`wah, and Guidance

(Part No. 20; Page No. 399)

Advice to those who wish to marry but cannot afford the expenses

Q 167: I am a youth in the secondary stage. I endeavor as much as possible to observe the obligatory acts of worship and the commands of Islam. Yet the problem I suffer from is that I can't get married due to the financial problems prevailing these days and I am afraid to commit what Allah has forbidden. Is there some advice and instructions that you can direct to the youth like me?

A: I advise you and your brothers in Islam with what the Prophet (peace be upon him) said: ('O young people! Whoever among you is able to marry, should marry, for marriage would help him lower his gaze and keep his virtuousness and whoever is not able to marry, is recommended to fast, for fasting will diminish his sexual desire.) (Agreed upon by Al-Bukhari and Muslim). O brother! Fear Allah and adhere to His Religion, and observe Sawm (Fast) as often

(Part No. 20; Page No. 400)

as possible until you can marry. You should ask your Lord to grant you safety and steadfastness on what is right and to facilitate your affairs. You should have glad tidings of goodness and a noble end. Allah (may He be Praised) says: (And whosoever fears Allâh and keeps his duty to Him, He will make a way for him to get out (from every difficulty).) (And He will provide him from (sources) he never could imagine.) May Allah facilitate your affairs and the affairs of every Muslim for He is the Ever-Hearing, the Ever-Accepter of all invocations!

(Part No. 20; Page No. 401)

There is no Superiority of an Arab over a non-Arab except in terms of Taqwa

From `Abdul-`Aziz ibn `Abdullah ibn Baz to our dear honorable brother the questioner, may Allah protect him!

As-salamu `alaikum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

I read your letter directed to a brother wherein you ask him to contact the people of knowledge about the ruling on marrying a woman from other than his tribe ...

The brother in question asked me about the answer to the question mentioned herein. Since Allah (Exalted be He) has made it obligatory upon us to clarify what is right and spread knowledge, I sought to answer this question as follows:

All praise be to Allah Alone, and may peace and blessings be upon the Messenger of Allah and upon his family and Companions and those who followed him! Muslim scholars agreed unanimously on the permissibility of a man marrying a woman outside of his tribe if they are of the same faith. They also agreed unanimously on the permissibility of a Muslim man marrying a chaste Christian woman, even if she is from the non-Arabs. There are many evidence from the Glorious Qur`an, the Sunnah and the practices of the Salaf (Righteous Predecessors) proving this act. Allah (Exalted be He) says:

(Part No. 20; Page No. 402)

(O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another. Verily, the most honourable of you with Allâh is that (believer) who has At-Taqwâ [i.e. he is one of the Muttaqûn (the pious. See V.2:2)]. Verily, Allâh is All-Knowing, All-Aware.) In this noble Ayah (Qur`anic verse) Allah clarified to His Servants that none has a privilege over another and none has superiority over another in the Sight of Allah (may He be Praised) except through piety. The most honorable people in the Sight of Allah is the one who fears Him most. (The Prophet (peace be upon him) was asked who the most honorable among the people are, so he said, "They are the most pious among them.")

Both the verse and Hadith indicate that all tribes are equal and that it is permissible for one from the tribe of Quraish or Banu Hashim to marry from the tribe of Tamim, Qahtan, or any other tribe, and vice versa. The Prophet (peace be upon him), who is the best among Banu Hashim, married Zaynab bint Jahsh, who was from Banu Asad ibn Khuzaymah and was not from the tribe of Quraish. The Prophet (peace be upon him) also married Um Habibah bint Abu Sufyan, Hafsah bint `Umar, Juwayriyah bint Al-Harith, Sawdah bint Zam`ah, Um Salamah, and `Aisha (may All be pleased with them all). They all were not from Banu Hashim. He (peace be upon him) married Safiyyah bint Huyay who was from the Children of Israel. `Umar Ibn Al-Khattab (may Allah be pleased with him) married Um Kulthum bint `Aly ibn Abu Talib (may Allah be pleased with them both). He was from Banu `Ady, whereas she was from Banu Hashim. `Uthman (may Allah be pleased with him) married Ruqayyah and Um Kulthum the two daughters of the Messenger (peace be upon him). He belonged to Banu Umayyah, whereas they were the two daughters of the Messenger of Allah (peace be upon him) and from Banu Hashim.

There are many facts recorded to this effect. All of them prove that the Prophet (peace be upon him) and his Companions (may Allah be pleased with them) did not care for the issue of affinity and concentrated on the straightforwardness of faith.

Another proof is that the Prophet (peace be upon him) married Usamah ibn Zayd off to Fatimah bint Qays. While she was from Quraish, Usamah was a freed bondsman from Banu Kalb. Abu Hudhayfah ibn `Utbah ibn Rabi`ah ibn `Abd Shams also married the daughter of his brother Al-Walid off to his freed bondsman Salim. She was from the tribe of Quraish, whereas Salim was a freed bondsman. Abu Bakr Al-Siddiq (may Allah be pleased with him) also married his sister to Al-Ash`ath Ibn Qays. Abu Bakr was from Banu Tamim from the tribe of Quraish, whereas Al-Ash`ath was from the tribe of Kindah, Yemen, from Qahtan. `Abdul-Rahman Ibn `Awf Al-Zuhry (may Allah be pleased with him) also married his sister to Bilal ibn Rabah, the muezzin. She was from Banu Zuhrah from Quraish, whereas Bilal was from Abyssinia.

All this proves to the seeker of knowledge that it is permissible for one to marry from other than one's tribe provided that there is steadfastness on Islam. The evidence and facts we mentioned are sufficient In sha'a-Allah (if Allah wills). I ask Allah (Glorified and Exalted be He) to guide us and all Muslims to have good understanding of Islam, to adhere to the Sunnah of the Master of all Messengers and to follow the footsteps of the Prophet (peace be upon him) and his Companions (may Allah be pleased with them). Indeed! He is Able to do all things! May Allah's peace be upon His Servant and Messenger, Muhammad, his family and Companions!

Vice President of the Islamic University

`Abdul-`Aziz ibn `Abdullah ibn Baz

(Part No. 20; Page No. 404)

Choosing a righteous wife

Q 169: What is the best way to choose a righteous wife?

A: Suitor should ask the people of knowledge and who are trustworthy about her and her family to be assured that the woman is Islamically committed. The Prophet (peace be upon him) said: ﴾Women may be married for four things: their wealth, their lineage, their beauty and their religious commitment. Choose the one who is Islamically committed, may your hands be rubbed with dust (i.e., may you prosper).﴿ (Agreed upon by Al-Bukhari and Muslim) He (peace be upon him) also said: ﴾This world is temporary conveniences and the best of its comforts is a righteous wife.﴿ Furthermore, the Prophet (peace be upon him) also said: ﴾A man follows the beliefs of his friend; so one should consider whom he takes as a friend.﴿ And: ﴾The similitude of good company and that of bad company is that of the owner of musk and of the one blows bellows. As for the owner of musk, you will either buy from him; he will offer it free of charge; or you will smell its pleasant odor. As for the one who blows bellows, he will either singe your clothes,

(Part No. 20; Page No. 405)

or you will be subjected to his repugnant smell.﴿ Allah is the Grantor of success!

Giving priority to marriage over Hajj if remaining single will lead to sin

Q 170: Should I marry first or help my mother with money to perform `Umrah and act as her Mahram (spouse or unmarriageable relative)?

A: If you can afford both marriage and `Umrah (Lesser pilgrimage), it is better to do both. You can marry and help your mother. If you can afford only one thing, marriage takes precedence over `Umrah. There is no harm if your mother waits until she can afford to perform `Umrah. If you face no hardship remaining single and have no strong desire to get married, there is nothing wrong with preferring your mother to yourself. However, if is difficult for you to remain single, you should marry first and apologize to your mother for delaying `Umrah until you can afford it.

It is impermissible for a Muhrim

to contract marriage for himself or on behalf of another person

Q 171: Is it permissible for a Muhrim (pilgrim in the ceremonial state for Hajj and `Umrah) who is still in a state of Ihram to contract marriage?

A: The Prophet (peace be upon him) said: (A Muhrim should not marry or give another in marriage.) So long as one is still in a state of Ihram, the Muhrim is prohibited to contract marriage for himself or on behalf of another person; be it his daughters or anyone under his care. The marriage contract becomes invalid if it is concluded by a Muhrim who is still in a state of Ihram. The basic principle of prohibition is nullification of the contract.

It is permissible to refuse marriage when there is a Shar`y excuse

Q 172: What is the ruling on a Muslim girl refusing to get married while she is chaste and Islamically committed and hence she finds no needs of marriage?

(Part No. 20; Page No. 407)

It should be mentioned that she lives in a community whose members disrespect Islam and mock at its committed followers. She is keen on not raising a family in this community for fear that her children may deviate from truth and go astray.

A: Marriage is permitted for both men and women to ensure that they remain chaste, lower their gaze and produce many Muslim offspring. Allah (Glorified and Exalted be He) says in His Noble Book: ﴿And marry those among you who are single (i.e. a man who has no wife and the woman who has no husband) and (also marry) the Sâlihûn (pious, fit and capable ones) of your (male) slaves and maid-servants (female slaves). If they be poor, Allâh will enrich them out of His Bounty. And Allâh is All-Sufficient for His creatures' needs, All-Knowing (about the state of the people).﴾ The Prophet (peace be upon him) said: ﴾'O young people! Whoever among you is able to marry, should do so, for marriage will help in lowering the gaze and remaining virtuous. Whoever is not able to marry, is recommended to fast, for fasting diminishes sexual desire.﴿ He (peace be upon him) used to urge people to marry and prohibit celibacy saying: ﴾Marry women who are loving and very prolific, for I shall outnumber the peoples by you on the Day of Resurrection.﴿ Consequently,

(Part No. 20; Page No. 408)

every Muslim, male or female, should obey the Prophet's (peace be upon him) instructions and hasten to marry to achieve the mentioned above benefits. Staying without marriage entails a grave danger. Hence, it is improper for the youth who can afford marriage to postpone it. Likewise, it is improper for a girl to postpone marriage if a suitable suitor makes her a proposal. Yet, there is nothing wrong with refusing marriage if she has an excuse which she does not want to disclose and prevents her from marriage. She may be born with a genetic abnormality in which the clitoris is so over grown that it protrudes from the genitals, or may have another Shar`y (Islamically lawful) excuse which makes her shun way from marriage. However, she is prescribed to hasten to marry if there is no impediment and the suitor is compatible with her regarding his Islamic commitment. When she refuses the suitor whose commitment is not acceptable, she is excused. Unworthy suitors who abandon Salah (Prayer), consume intoxicants or commit other sins should not be accepted. It is impermissible for a Muslim woman to marry a person abandoning Salah (Prayer) because he is regarded as a disbeliever.

In conclusion, if the suitor is an efficient person, she must accept and hasten to marry him. She should not remain single as it entails danger and going against the Sunnah. If she has a Shar`y excuse (Islamically lawful) which she knows about herself or she cannot find a suitable husband among the corrupted community surrounding her, she is excused.

Prohibition of giving women in marriage without their permission

Q 173: My father forced my sixteen years old sister to marry a man whom she does not desire. She tries now to commit suicide saying that death is more desirable to her than this man

A: This manner of marriage is Munkar (that which is unacceptable or disapproved of by Islamic law and Muslims of sound intellect) and invalid according to the most correct view of scholars. This is because the Prophet (peace be upon him) (forbade giving women in marriage, except with their permission.) He (peace be upon him) informed us that the silence of a virgin in answer to the proposal of marriage is deemed as her acceptance or consent. It was reported that when a young woman came to the Prophet (peace be upon him) to tell him that her father gave her in marriage without her consent, he (peace be upon him) gave her the choice either to stay with the husband or to reject him. Among the bad habits followed by the Bedouins and others is giving their virgin daughters in marriage without their permission. I hold the view to allow pious persons to act as an intermediary between the two parties to cancel the marriage contract. If they manage to do so, this is great; otherwise you should refer this issue to the court which will solve it. Allah is the Grantor of success!

A matron should not be married till she is asked for approval and a virgin should not be married till she is asked for her permission

Q 174: What about a woman who is married before reaching puberty then, when she matures, disapproves of the marriage? Is it permissible for her to marry another man without being divorced from her present husband, or must she get divorced? What is the evidence, if there is any, regarding this issue?

A: If she was married with her consent, she should listen and obey her husband and observe all the duties of marriage. It is not permissible for her to marry other than her husband who concluded the marriage contract on her before she reached puberty as long as the one who endorsed marriage is her father. This is because the Prophet (peace be upon him) said: (A matron should not be given in marriage except after consulting her; and a virgin should not be given in marriage except after her permission. The people asked, "O Allah's Messenger! How can we know her permission?" He said: "Her silence (indicates her permission).") (Agreed upon by Al-Bukhari and Muslim) This Hadith includes the mature and the immature girl. It is authentically reported in Sahih Muslim on the authority of Ibn `Abbas (may Allah be pleased with both of them) that the Prophet (peace be upon him) said: (A woman who has been previously married has more right to her choice

than her guardian. And a virgin should also be consulted, and her silence implies her consent.) Abu Dawud and Al-Nasa'y narrated this Hadith with a good Isnad (chain of transmitters) with the following wording: (A guardian has no authority over a matron (regarding her marriage-decision), and the command (i.e., permission) of an orphan girl should be sought and her silence is (the sign of) her approval.) This Hadith is clear about the validity of marriage of an immature woman if she shows consent even by her silence.

If she was not asked for permission and the one who concluded her marriage is someone other than her father, the marriage is invalid according to the sounder of the two opinions of Muslim scholars. Nevertheless, she is not permitted to marry other than her husband except after he divorces her or the marriage becomes null and void by the order of a legal judge. In order to avoid the disagreement of scholars, some held that marriage is valid and she is to be given free choice after reaching maturity as well as to decide the relation of the present husband. She is not allowed to marry another unless she ensures she is not pregnant by waiting one menstruation period if her husband had sexual intercourse with her. If the one who endorsed the marriage is someone other than her father, there are differences among scholars concerning this. Some of them validate this marriage if she is a virgin according to the meaning of the Hadith of the Prophet (peace be upon him): (An orphan should be asked for consent (in her marriage).) Those scholars hold the view that the Hadith points out that if the woman is not an orphan, her father can marry her to anybody without seeking her permission. However, a group of scholars viewed that a father is not entitled to compel his virgin daughter to marry anybody without her permission provided that she has reached the age

of nine year and similarly in case of a matron according to the mentioned above Hadith in which the Prophet (peace be upon him) said: (A matron should not be given in marriage except after consulting her; and a virgin should not be given in marriage except after her permission.) This Hadith includes those who are orphans and those who are not, and it is more authentic than that which they brought as evidence for the girl who is not orphan. It elaborates on the issue in plain terms while their proof from the Hadith of the orphan is comprehended and, therefore, this Hadith takes precedence. Also, the Prophet (peace be upon him) said in an authentic narration of the Hadith: (A virgin's father must ask her consent from her.) This wording leaves no doubt about the matter as it corresponds with other Hadiths related to the issue and the legal principles concerning guarding against committing adultery. In our point of view, this is the correct opinion due to the clearness of its proofs and therefore, it is obligatory on the husband of this young woman who married him without her permission and with the endorsement of her father, to divorce her in order to avoid the disagreement of scholars and to decide his relation to her due to the mentioned above difference of scholars. This divorce is regarded as irrevocable divorce for it aims at separating between this couple which cannot take place except by

considering it as a minor irrevocable divorce like divorce against a compensation. Moreover, divorce must be fulfilled by a legal judge who separates between them according to legal evidence, for his judgment cancels differences in disputable issues and puts an end to disagreement. If the girl is less than nine years old, Ibn Al-Mundhir related that scholars agreed that the father of a girl of this age is permitted to marry her to a competent person without her permission for the Prophet (peace be upon him) got married to `Aisha (may Allah be pleased with her) withou her permission and knowledge and she was younger than nine years old.

We supplicate to Allah to grant us, you and all Muslims understanding of His Religion and adherence

to it! Indeed, Allah is the Best One asked for help! As-salamu `alaikum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

It is not permissible to force a girl to marry a man whom she does not want

Q 175: What is the ruling on a father forcing his daughter to marry a man whom she does not want?

A: This is not permissible as the Prophet (peace be upon him) said: (The father must seek the virgin's permission. Her consent is indicated by her silence.) It is not permissible for the father

(Part No. 20; Page No. 414)

to force a girl to marry someone she does not want, even if he is suitable and pious. Rather, he should advise and instruct her towards goodness. She is prescribed to obey her father in goodness especially if the suitor is pious. She should obey him and appreciate his kind treatment and compassion. But, if she does not want to marry this suitor, she is not obliged to obey her father based on the mentioned above Hadith. Allah is the Grantor of success!

Q 176: Is it permissible for a father to force his daughter to marry a person whom she does not want to marry?

A: A father or any other person is not allowed to force the girls towards whom they act as Waliys (a legally accountable person acting for a woman seeking marriage) to marry one whom she does not want to be married to. Rather, her consent is a necessity as the Prophet (peace be upon him) said: ("A previously-married woman cannot be given in marriage until she is consulted, and a virgin cannot be married until her permission is obtained." They said: "O Messenger of Allah! How is her permission?" He said: "by keeping silent") In another narration, the Prophet (peace be upon him) said: (Her silence is her permission) In the third narration: (A virgin's father must ask her permission , and her permission is (obtained by) her silence) .

(Part No. 20; Page No. 415)

Accordingly, a woman's father or Waliy (a legally accountable person acting for a woman seeking marriage) must ask for her permission if she is nine years old or above. She may not be given in marriage except with her consent. This is Wajib (obligatory) upon everyone involved. If a person gives his charge in marriage without her permission, the marriage becomes invalid; for the mutual consent of both parties is one of the conditions of marriage. Therefore, anyone who compels a woman to marry unwillingly by means of force or threat; this marriage becomes invalid, except for a father whose daughter has not yet reached nine years. According to the correct view, if she is under nine, and he gives her in marriage, there is no harm in doing so, since the Messenger (peace be upon him) (married `Aishah without her permission when she was under nine) as mentioned in the Sahih (authentic) Hadith. But, if she is nine or more, he should not give her in marriage except with her consent, even if the Waliy is her father.

Furthermore, a man should not complete the procedures of marriage knowing that a woman does not agree, even if the father agrees. Rather, he should fear Allah and not pursue a woman who does not want him; regardless of her father's claims of her consent. He should beware of what Allah (Exalted be He) has prohibited for him, since the Messenger (peace be upon him) ordered to obtain her consent. We recommend all women to fear Allah and agree to the choice of her father or Waliy Waliy (a legally accountable person acting for a woman seeking marriage), if the suitor is a pious person, for the great benefits of marriage on one hand and the risks of remaining single on the other hand. As a result, we recommend all girls to accept whoever is suitable and not use their studies or the like as an excuse. Allah is the Grantor of success!

(Part No. 20; Page No. 416)

Marrying women to whomever they approve of

Q 177: A young man, whose Islamic commitment and manners please me, has proposed to my daughter. It is noteworthy to mention that she, her mother, and all the family have accepted except my mother. Can I give my daughter in marriage to this young man, or should I follow my mother's opinion? Kindly provide us with your Fatwa (legal opinion issued by a qualified scholar). May Allah reward you well!

A: You and your family must act to marry your daughter to a pious man whose Islamic commitment and morals are acceptable. Anyone who objects to this should be disregarded, whether it is the grandmother or another person. The Messenger (peace be upon him) said: ﴾A previously married woman cannot be married except after consulting her; and a virgin cannot be given in marriage except after getting her permission. People said: "O Allah's Messenger! How is her permission?" He said: "Her keeping silent."﴿ .

(Part No. 20; Page No. 417)

(Agreed upon by Imams Al-Bukhari and Muslim) He (peace be upon him) also said: ﴾If one comes to you, whose Islamic commitment and manners please you, then marry (your daughter or other female relative under your care) to him, otherwise there will be much temptation and corruption on earth.﴿ In another narration, he (peace be upon him) said: ﴾...and great corruption.﴿ This shows that it is obligatory to accept any suitor who is qualified and do not refuse him, especially if the woman approves. It is one of the great bounties of Allah that your daughter and you accept him, and this is not to be contested by the grandmother or anyone else.

Q 178: It has become common nowadays in many families to prevent a girl from marrying due to the opinion of one of her family members. Would you please give your advice?

A: The family and Waliy (a legally accountable person acting for a woman seeking marriage) in particular must choose the suitor who is Islamically committed and well-mannered to marry a girl off to him if she accepts. None is allowed to object because of personal desire, hatred or desire for worldly gains.

All these reasons should be disregarded. The most important factor is the religious commitment and good character the suitor has. Concerning the woman, the Prophet (peace be upon him) said: ﴾A woman is married for four things: her wealth, family status, beauty, and piety. Choose one who is pious, and your hands will be covered in dust (i.e. you will have the source of all goodness)."﴿ The same holds true for men as well. The Waliy must be keen to welcome the suitor who is Islamically committed and ignore any opposite opinions of family members. The Prophet (peace be upon him) said: ﴾If someone with a satisfactory standard of faith and good conduct comes to you seeking marriage, then give him (your daughter or sister) in marriage. If you refuse, it will lead to the spread of great temptation and corruption in the land.﴿

Q 179: Your Eminence Shaykh `Abdul-`Aziz ibn `Abdullah ibn Baz, Grand Mufty of the Kingdom, may Allah safeguard you!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

Kindly be informed that my daughter's cousin has proposed marriage to her. He is very suitable for her, but her brothers refuse him. All my attempts to persuade them to accept this suitor are of no avail. Would you please explain the ruling on this and advise them? May Allah reward you! It is worth mentioning that the suitor's mother has been very good to my wife. As-salamu `alaykum warahmatullah wabarakatuh!

A: As-salamu `alaykum warahmatullah wabarakatuh

This is none of their affair; it is yours, since you are her father and Waliy (a legally accountable person acting for a woman seeking marriage). If the suitor is Islamically committed and your daughter accepts him, you must give her in marriage to him even if her brothers do not agree. If they have any suspicions about him, this matter can be examined by the court. Your daughter is regarded as a trust for which you will be held accountable on the Day of Resurrection. It is not permissible to prevent her from marrying because of her brothers. May Allah guide all Muslims to that which pleases Him! As-salamu `alaykum warahmatullah wabarakatuh

Grand Mufty of the Kingdom of Saudi Arabia

`Abdul-`Aziz ibn `Abdullah ibn Baz

(Part No. 20; Page No. 420)

Ruling on delaying the marriage of younger daughter

Q 180: It is a tradition in our village that the younger daughter cannot be given in marriage before the elder one. Some families refuse to marry off the younger daughter until a suitor proposes marriage to the elder daughter. Is this tradition lawful? What is the ruling on this act?

A: This unacceptable tradition is not permissible. The girl's Waliy (a legally accountable person acting for a woman seeking marriage) has to marry her off if the suitor has a satisfactory standard of religious commitment and good conduct and is accepted by the girl. It is not permissible to delay the marriage of the younger daughter until the elder one gets married. The Prophet (peace be upon him) said: ﴾If someone with a satisfactory standard of faith and good conduct comes to you seeking marriage, then give him (your daughter or sister) in marriage. If you refuse, that will lead to spread of temptation and great corruption in the land.﴿ Also, postponing the marriage of the younger daughter until her older sister gets married is a form of injustice. This may even cause both of them to be delayed in marriage or not to get married. The Prophet (peace be upon him) said: ﴾Be on your guard against committing oppression, for oppression is darkness on the Day of Resurrection.﴿

(Part No. 20; Page No. 421)

The Waliy is advised to fear Allah, be keen to give the girls under their care in marriage to the suitable suitors, and beware of delaying marriage wrongfully. May Allah grant all Muslims success!

Merits of hastening to marry

Q 181: One thinks that the salary of a girl, her job, the financial and social status of a suitor or her education may lead at times to delaying marriage, what are your directions in this regard? May Allah reward you with the best!

A: A: It is most required to hasten to marry. Young men should not delay marriage due to studying. Marriage is not an obstacle in the way of this. It is also possible that a young man gets married in order to guard his religion and manners and lower his gaze, and continue in studying. Similarly, if Allah brings to a young woman a competent person, she should take the initiative to marry him even if she is still studying; whether in secondary education or in post graduation studies, for all of this does not prevent marriage.

(Part No. 20; Page No. 422)

Moreover, people should accept a competent suitor even if this leads to some interruption in education. It is important that a woman learns her religion but anything else is a secondary benefit while marriage includes many benefits and especially in this time. Besides, delaying marriage in this time includes great harms to youth. Consequently, every young man and woman should take the initiative to marry; a young woman should not hesitate and delay marriage when she finds a competent suitor and a young man should proceed to marry when he finds a good fiancée in accordance with the saying of the Prophet (peace be upon him) in the Sahih (authentic) Hadith: ﴾O young people! Whoever among you is able to marry, should marry, for marriage would help him lower his gaze and keep his virtuousness and whoever is not able to marry, is recommended to fast, for fasting would diminish his sexual appetite.﴿ (Agreed upon by Imams Al-Bukhari and Muslim) This Hadith includes both young men and young women, not only men for both are in need of marriage. May Allah grant us all guidance!

182- Marrying religiously committed and well-mannered suitors

**Your Eminence, the Grand Mufty of the Kingdom of Saudi Arabia and Chairman of the Departments of Scholarly Research, Ifta', Daw`ah, and Guidance, Shaykh** `Abdul-`Aziz ibn Baz,

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

I have a problem. My father died leaving behind my sister, mother and one aunt. I am helpless. My cousin proposed marriage to me, but some evil people prevented me from marrying him. The reason they gave for their refusal was that I am one of Al-Ashraf (Muslim descendants from the Prophet's family) while the suitor is not. I resorted to the Court of Al-Qanfadhah which referred my case to the governorate and then to Al-Shaqqah district to ask whether I have agnate relatives or not. The chief of my tribe refused to answer the court. I have no agnate relatives and I want to marry my cousin, but I am helpless. Would you please help me address the head of the Court of Al-Qanfadhah or his deputy to contract the marriage? Your Eminence sent earlier

a letter no. 3384, dated 17/10/1418 AH, to the judge of the Court of Al-Qanfadhah but there is nothing new.

A: As-salamu `alaykum warahmatullah wabarakatuh

This matter should be examined by the court and what it decides is sufficient. There is no harm if a female descendant from Al-Ashraf gets married to a person who is not from Al-Ashraf. The Prophet (peace be upon him) gave `Uthman his two daughters Ruqayyah and Umm Kulthum in marriage, although he was not from Al-Ashraf. There is an abundance of Hadith which affirm this. Allah (Glorified be He) says: (Verily, the most honourable of you with Allâh is that (believer) who has At-Taqwâ [i.e. he is one of the Muttaqûn (the pious)].) The Prophet (peace be upon him) said: (If there comes to you (to propose marriage to your daughter) a person whose religious commitment and character you are pleased with, then marry (your daughter) to him, otherwise, there will be Fitnah (temptation) on earth and widespread corruption.) May Allah grant all Muslims success!

As-salamu `alaykum warahmatullah wabarakatuh

Grand Mufty of the Kingdom of Saudi Arabia

`Abdul-`Aziz ibn `Abdullah ibn Baz

It is not permissible for parents to tolerate neglect of religious matters

Q 183: Unfortunately, some parents are found to be negligent in things of great importance such as observing Taqwa (fearing Allah as He should be feared), maintaining Salah (Prayer) and establishing the rites of Islam, while, on the other hand, concentrating on other issues. Perhaps your Eminence would have an opinion on that, for example; to prevent a girl from marrying anyone other than her paternal cousin and claiming that she is engaged to him, whereas she is not. What are the instructions of your Eminence about this matter?

A : Being negligent in matters of Din (religion of Islam) such as Salah, Zakah (obligatory charity), Sawm (fast) and Hajj, Zina (premarital sexual intercourse and/or adultery), Riba (usury/interest), intoxicants, and other acts of disobedience is seriously grave. At the same time, gratefulness to parents, enjoining good, and forbidding evil are important issues. Therefore, neither rulers nor others are to take the matters of Din lightly.

A person, who by dint of weak Iman (faith/belief) or lack of Taqwa, tends to neglect religious duties and strictly observes other issues out of following societal or tribal tradition, rarely accepts advice,

for his insistence on marrying his daughter or sister to her cousin is wrong, unfair and Munkar (that which is unacceptable or disapproved of by Islamic law and Muslims of sound intellect). It is obligatory on a Waliy (a legally accountable person acting for a woman seeking marriage) to marry his daughter to the qualified person, even if outside the clan; according to Allah's Saying (Glorified be He): ﴾Verily, the most honourable of you with Allâh is that (believer) who has At-Taqwâ [i.e. he is one of the Muttaqûn (the pious)].﴿ The Prophet (may Allah's Peace and Blessings be upon him) also says: ﴾If there comes to you a person who is noted for his religious commitment and morality, then marry (your daughter or other female relative under your care) to him, for if you do not do that there will be much corruption in the land.﴿ As previously mentioned, she should be married to a qualified person of whom she approves, even if he is not a relative of hers; for the Prophet (peace be upon him) said: ﴾A previously-married woman should not be married except after consulting her and a virgin cannot be married except with her permission. People said: "O Messenger of Allah, how to know her permission?" He said: "Her keeping silent."﴿ Agreed upon by Al-Bukhari and Muslim. The Prophet (may Allah's Peace and Blessings be upon him) also says: ﴾A virgin's father must ask her permission and her permission is her being silent, and a previously-married woman has more right concerning herself than her Waliy.﴿ It is then evident that a father has no right to force his daughter to accept whomever

she does not want to marry. Both a virgin and a previously-married woman should not be obliged;

rather, their permission and consent should be acquired. A previously-married woman is to pronounce her approval while it suffices for a virgin to remain silent according to the mentioned Hadith. Thus, her Waliy should choose for her a pious man, even from outside her tribe or other tribes, even if he is not a descendent of a famous tribe so long as he is pious and has morals. Allah (Glorified and Exalted be He) says: ﴾O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another. Verily, the most honourable of you with Allâh is that (believer) who has At-Taqwâ [i.e. he is one of the Muttaqûn (the pious. See V.2:2)].﴿ However, if the father's tribe does not accept that and he fears their tyranny, he should seek a person whose Din and morals pleases him among her tribe or any known Arabian tribe, in keeping with Allah's Saying (Glorified be He): ﴾So keep your duty to Allâh and fear Him as much as you can﴿ Allah (Glorified and Exalted be He) also says: ﴾Those who are faithfully true to their Amanât (all the duties which Allâh has ordained, honesty, moral responsibility and trusts) and to their covenants;﴿ It is quite known that a daughter, sister, or the like are trusts that their guardian should care for by teaching, directing to good and looking for a pious husband for them, even from outside their tribe. Allah is the One Who grants success.

Ruling on illegal kinds of marriage

Q: A questioner from Tanta , Arab Republic of Egypt asks, "We hear about secret marriage, `Urfi marriage (without an official contract), Mut`ah marriage (temporary marriage for a stipulated period) and Misyar marriage. What is the ruling on these kinds of marriage? We hope that you will illustrate this for us, thank you.

A: Any kind of marriage that goes against the purified Shari`ah (Islamic Law) is not permissible. The lawful marriage is that which is announced and meets all the legally considered pillars and conditions of marriage. May Allah grant us success!

Permissibility of wearing a silver ring

Q 185: What is the ruling on wearing a silver ring for men?

A: There is nothing wrong with wearing a silver ring for both men and women, because

(Part No. 20; Page No. 429)

the Prophet (peace be upon him) and his Sahabah (Companions, may Allah be pleased with them) wore silver rings. However, it is permissible for women only to wear gold rings, because the Messenger of Allah (peace be upon him) ﴾forbade wearing gold rings (for men).﴿ When ﴾he (peace be upon him) saw a man wearing a gold signet ring in his hand, he pulled it off and threw it away, saying: "One of you is wishing for live coal from Hell and putting it on his hand."﴿ (Related by Muslim in his Sahih (authentic) Book of Hadith)

It is better for a man to wear a silver ring on his little finger as the Prophet (peace be upon him) used to do so.

It is permissible to look at one's fiancée without Khulwah

Q 186: I love a young woman very much and she loves me as well. I saw her once and we exchange phone calls. We talk about the requirements of marriage and marital life.

(Part No. 20; Page No. 430)

Our talks do not exceed the limits. Examples of topics we talk about include the role of a wife towards her husband and importance of the mutual understanding of the spouses. I told my parents about my wish to propose to this young woman. My father asked me to delay this matter until our financial position gets better. I performed Hajj and visited the Sacred Masjid (Mosque) in Makkah and performed Tawbah from many previous sins. Is it permissible to continue communicating with this woman over the phone or not? Please advise. May Allah reward you with the best!

A: It is permissible for a person who wants to propose marriage to a woman to speak with and look at her without Khulwah (being alone with a member of the opposite sex). When someone came to the Prophet (peace be upon him) seeking his advice about his proposal of marriage, he (peace be upon him) said: (Have you looked at her? He said: No. The Prophet (peace be upon him) said: Go and look at her, and then he said: When one of you asked a woman in marriage, if he is able to look at what will induce him to marry her, he should do so.) If this is the case with the question of looking at the potential spouse, then speaking to her is harmless. There is nothing wrong with speaking to the prospective fiancée provided one is seriously deciding on marriage. He may speak to her about the marriage-related topics such as the house they will live in, engagement, etc.

(Part No. 20; Page No. 431)

It should be noted that they can do through phone or the like while they are bodily separated or when her father, mother, brother or the like is present so that the condition of Khulwah can be met.

Wearing glasses in front of a suitor

Q 187: If a woman wears glasses, should she meet her suitor while wearing her glasses? Is it one of his rights to be told that she wears glasses, given that contact lenses have replaced glasses nowadays? What do you recommend? May Allah reward you with the best!

A: There is no harm whether she meets her suitor while wearing glasses or not. Allah is the Grantor of success!

Al-Misyar marriage and its conditions

Q 188: His Eminence Shaykh! What is the difference between Misyar marriage (travelers' marriage) and legal marriage? What are the conditions necessary for the Misyar marriage to be valid? May Allah reward you with the best!

(Part No. 20; Page No. 432)

A: Every Muslim should marry in the legal way and beware of everything contradictory to it, whether it is called Misyar marriage or anything else. One of the conditions of legal marriage is publicity; if both spouses hide it from the people, it is not a valid marriage because it will be considered similar to Zina (adultery). Allah is the Grantor of success!

Permissibility of contracting marriage for a couple of the same religion

Q 189: What is the ruling of Islam on a man and a woman who do not offer Prayer, is it permissible to conclude a marriage contract for them?

A: A: If both of them do not offer Prayer, their marriage is valid in the same way as non-Muslims. If Allah (Exalted be He) guides them and they offer Prayer and return to Him in repentance, they should continue their marriage like non-Muslims when they adopt Islam for they should continue their marriage. This is based on that the Prophet (peace be upon him), on the day of the Liberation of Makkah, did not order those who embraced Islam to renew their marriages.

Ruling on Tahlil marriage

Q 190: A questioner from Cairo asks, "I knew that one of my close friends divorced his wife three times

(Part No. 20; Page No. 433)

and consequently she became unlawful to him until she marries another man. Is it permissible for me to get married to her and divorce her after some time so that he may marry her again taking into consideration that I will not tell anyone of this intention? Enlighten me, may Allah reward you with the best and increase your reward!

A: This is not allowable for you since this sort of marriage is called Tahlil marriage (a marriage contracted for the sole purpose of legalizing remarriage between an irrevocably divorced couple). The Prophet (peace be upon him) has cursed the one who does so and called him Al-Tays Al-Musta`ar (borrowed billy goat). Thereupon, you should beware of it for it is an invalid marriage and does not make the divorced woman lawful to her first husband. May Allah guide us all to what pleases Him!

191- Obedience in that which is good

From `Abdul-`Aziz ibn `Abdullah ibn Baz to the honorable brother from Riyadh, may Allah grant him success!

As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!) To proceed:

It was mentioned in your letter what reads: One of my pious female relatives who adhere to the Sunnah (supererogatory act of worship following the example of the Prophet) of Muhammad (peace be upon him) is previously married woman with three children. Will I be rewarded by Allah (Glorified and Exalted be He) if I marry her to help her fortify herself and raise her children, despite the Messenger's encouragement to marry a virgin for being more virtuous? It should also be mentioned that my parents do not agree on my marriage to this woman although they know very well how pious she is. They are afraid that I will become overburdened with providing for her children. Is disobeying my parents in this matter considered a form of undutifulness to them? It is noteworthy that, praise be to Allah, I am well-to-do and so are they [the parents. Ed.]. Kindly provide me with a Fatwa (legal opinion issued by a qualified scholar) in this regard. May Allah reward you well on behalf of all Muslims and myself!

A: All praise be to Allah, and peace and blessings be upon the Messenger of Allah, his family, Companions and those who followed their path until the Day of Judgment! To proceed:

You will be rewarded for marrying this woman, insha'a Allah (if Allah wills). This is because you will combine between both doing good to her by marriage and maintaining your ties of kinship. You will also be given glad tidings of blessing and great recompense of reward for supporting her children and her financially for Allah (Glorified be He) says: ﴿and whatsoever you spend of anything (in Allâh's Cause), He will replace it. And He is the Best of providers.﴾ However, we view that you should seek your parents' permission in a good manner to avoid arguing with them and becoming undutiful to them. May Allah make your affairs easy for you and guide them to agree upon your choice!

As for the books you have required in your letter, we recommend you to send it in a separate letter along with your academic qualifications, and we shall look into it. May Allah grant everybody success to do what pleases Him! As-salamu `alaykum warahmatullah wabarakatuh (May Allah's Peace, Mercy, and Blessings be upon you!)

Chairman of the Departments of Scholarly Research,

Ifta', Da`wah, and Guidance

`Abdul-`Aziz ibn `Abdullah ibn Baz

The end of volume twenty

It will be followed by volume twenty one

It will begin with a chapter on the prohibitions in marriage